DATE		FILINGS-PROCEEDINGS
1971		
Feb.	16	Response of FCC to motion concerning oral argument
	16	Motion of FCC for leave to file motion to extend time to file brief to Feb. 22, 1971
	17	Reply of CBS to FCC's response to motion to set case for argument with related case
	17	Brief for CBS
	17	Brief for ABC
	22	Order granting FCC leave to file motion to extend time to file brief to Feb. 22, 1971 and extending time to file brief of FCC to Feb. 22, 1971
	22	Order scheduling case for argument on the merits with related case
	22	Brief for FCC
Mar.	3	Motion of CBS for additional time for oral argument
	5	Motion of DNC to accept reply brief not in conformity with the court rules
	8	Order accepting reply brief of DNC not in conformity with court rules
	8	Reply Brief for DNC
	8	Order denying CBS additional time for oral argument
	9	Oral argument before Judges Wright, McGowan and Robinson
Aug.	3	Opinion of Court of Appeals by Judge Wright; dissenting opinion by Judge McGowan
	3	Judgment reversing and remanding to FCC
	11	Motion of FCC to extend time to file petition for rehearing to Aug. 31, 1971

DATE		FILINGS-PROCEEDINGS
1971		
Aug.	16	Opposition of BEM to motion of FCC to extend time to file petition for rehearing
	18	Opposition of DNC to motion of FCC to extend time to file petition for rehearing
	27	Motion of ABC for leave to file petition for rehearing
	30	Order extending time to file petition of FCC for rehearing to Aug. 31, 1971
	31	Motion of ABC for leave to file petition for rehearing and suggestion for rehearing en banc
	31	Consent of parties for NBC to file amicus curiae brief
	31	Motion of CBS for leave to file petition for rehearing and suggestion for rehearing en banc
	31	Petition of FCC for rehearing and suggestion for rehearing en banc
Sept.	13	Order granting CBS leave to file petition for rehearing and to file suggestion for rehearing en banc
	13	Petition of CBS for rehearing and suggestion for rehearing en banc
	15	Motion of NBC to file brief as amicus curiae
Oct.	4	Order directing Clerk to file brief of amicus curiae in support of the petition for rehearing
	4	Order denying petition for rehearing
	4	Brief for NBC
	4	Letter to counsel that no judge requested a vote on suggestion for rehearing en banc and that no action will be taken on said petition

DATE		FILINGS-PROCEEDINGS
1971		
Oct.	12	Certified copy of opinion and judgment issued to the FCC
	14	Motion of FCC to recall mandate and for leave to file motion for stay of mandate
	20	Order directing FCC to return mandate issued on Oct. 12, 1971 and directing Clerk to stay reissuance until Oct. 22, 1971
	21	Motion of FCC to further stay mandate to Nov. 22, 1971
	22	Certified copy of mandate issued on Oct. 12, 1971 returned by FCC
	22	Certified index to record returned by FCC
	22	Order denying further motion of FCC for stay of mandate
	26	Answer of Post-Newsweek in support of motion for stay of mandate
	29	Certified copy of opinion and judgment reissued to the FCC
Nov.	9	Order denying the motion of FCC to further stay mandate until Nov. 22, 1971
	12	Receipt dated Nov. 5, 1971 from the FCC for "Certified Index to the Record"

II

Docket Entries
in the
United States Court of Appeals (D.C. Cir.)
in
Business Executives' Move for Vietnam Peace
v. *Federal Communications Commission,*

No. 24,492

DOCKET ENTRIES

DATE		FILINGS-PROCEEDINGS
1970		
July	31	Petition of BEM for review of FCC inaction equivalent to an order denying relief
	31	Motion of BEM for temporary relief
	31	Motion of BEM to suspend rules and order immediate hearing
Aug.	3	Certified copies of petition for review mailed to FCC and to Attorney General by certified mail
	6	Response of FCC to motion for temporary relief
	7	Certified mail receipt returned from Attorney General
	12	Certified mail receipt returned from FCC
	25	Motion of BEM to file amended petition for review
Sept.	11	Order directing Clerk to file amended petition of BEM for review and extending time for filing of responses to Sept. 21, 1970
	11	Amended petition of BEM for review
	21	Opposition of FCC to motion for temporary relief
	23	Certified copy of amended petition for review mailed to FCC
	23	Certified copy of amended petition for review mailed to Attorney General by certified mail
	23	Motion of Post-Newsweek for leave to intervene
	23	Motion of Post-Newsweek for leave to file opposition to request for temporary relief by Sept. 24, 1970
	23	Order granting Post-Newsweek leave to intervene

DATE		FILINGS-PROCEEDINGS
1970		
Sept.	23	Order granting Post-Newsweek leave to file opposition to request for temporary relief by Sept. 24, 1970
	24	Objection of Post-Newsweek to request for temporary stay
	28	Reply of BEM to objection to motion for temporary relief
	29	Order denying motion of BEM for temporary relief and directing counsel to submit by Oct. 9, 1970 an agreement setting forth dates on which briefs and appendix will be filed
Oct.	20	Order directing time for filing briefs and allowing parties to proceed under Rule 30(c)
—	21	Certified index to record
Nov.	16	Motion of BEM for leave to file motion to extend time to file brief
	19	Order granting motion of BEM for leave to file motion to extend time to file brief and extending time to Nov. 23, 1970
	23	Brief for BEM
Dec.	16	Motion of BEM for leave to file amended brief
	16	Joint appendix to briefs
	18	Motion of FCC for leave to file for Post-Newsweek and FCC
	22	Order granting motion of FCC for leave to file motion to extend time to file brief and tending time to Dec. 30, 1970
	30	Brief for Post-Newsweek
	30	Brief for FCC

DATE		FILINGS-PROCEEDINGS
1971		
Jan.	8	Order granting motion for leave to file amended brief
	8	Brief for FCC
	13	Brief for Post-Newsweek
	13	Motion of BEM for leave to file reply brief
	14	Brief for FCC
	20	Order granting motion of BEM for leave to file reply briefs
	20	Reply brief for BEM
Mar.	9	Oral argument before Judges Wright, McGowan and Robinson
Aug.	3	Opinion of Court of Appeals by Judge Wright; dissenting opinion by Judge McGowan
	3	Judgment reversing and remanding to FCC
	11	Motion of FCC to extend time to file petition for rehearing to Aug. 31, 1971
	16	Opposition of BEM to motion to extend time to file petition for rehearing
	18	Opposition of DNC to motion to extend time to file petition for rehearing
	20	Motion of Post-Newsweek for leave to file petition for rehearing
	23	Response of BEM in opposition to motion for leave to file petition for rehearing
	27	Motion of ABC for leave to file petition for rehearing
	30	Order granting ABC leave to file petition for rehearing and to file suggestion for rehearing en banc and extending the time to file the petition for rehearing by the FCC to Aug. 31, 1971

DATE		FILINGS-PROCEEDINGS
1971		
Aug.	30	Petition of Post-Newsweek for rehearing and suggestion for rehearing en banc
	30	Petition of ABC for rehearing
	31	Petition of FCC for rehearing and suggestion for rehearing en banc
Oct.	4	Order denying petitions of FCC, ABC and Post-Newsweek for rehearing
	4	Letter to counsel that no judge requested a vote on suggestion for rehearing en banc and that no action will be taken on said petition
	12	Certified copy of opinion and judgment issued to the FCC
	14	Motion of FCC to recall mandate and for leave to file motion for stay of mandate
	20	Order directing FCC to return mandate issued on Oct. 12, 1971 and directing Clerk to stay reissuance until Oct. 22, 1971
	21	Motion of FCC to further stay mandate to Nov. 22, 1971
	22	Certified copy of mandate issued on October 12, 1971 returned by FCC
	22	Certified index to record returned by FCC
	22	Order denying further motion of FCC for stay of mandate
	26	Answer of Post-Newsweek in support of motion for stay of mandate
	29	Certified copy of opinion and judgment reissued to the FCC
Nov.	9	Order denying the motion of FCC to further stay the mandate until Nov. 22, 1971
	12	Receipt dated Nov. 12, 1971 from the FCC for the "Certified Index to the Record"

III

Relevant Pleadings Before and Orders of the Federal Communications Commission in *Democratic National Committee*, F.C.C. 70-861

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

IN RE DEMOCRATIC NATIONAL COMMITTEE,
Washington, D. C.

Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations

To: The Commission.

REQUEST FOR DECLARATORY RULING

The Democratic National Committee (hereinafter called the DNC), by its counsel, pursuant to Section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and Section 1.2 of the Commission's regulations, requests that the Commission issue a declaratory ruling:

> That under the First Amendment to the Constitution and the Communications Act, a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969).

The DNC is willing to purchase time at regular commercial rates and is not at this time requesting a ruling that free time for the specified purposes must be made available to it.[1]

[1] On the other hand, the DNC believes that the networks and individual stations have a legal and moral responsibility to make significantly more free time available to responsible groups for public issue programming. In this connection it is important to note the enormous profitability of the broadcast industry, the unprecedented and unique impact of television on our society and the urgent problems of public policy that our nation now faces.

The DNC Requires Access to the Broadcast Media To Broaden Its Financial Base.

The DNC seeks this ruling for two interrelated purposes, which it believes are essential to the continuation and improvement of the nation's political system. In the words of the recently issued report of an expert and prestigious non-partisan Commission on campaign costs —the *Voters' Time* report—the DNC hereby seeks:

1. "To guarantee that there is basic access to the broadcast media for all significant candidates . . . ;" and

2. "To stimulate effective citizen participation in the processes of democratic government by encouraging small contributions to political campaigns." *Voters' Time, Report of the Twentieth Century Fund, Commission on Campaign Costs in the Electronic Era*, p. 17 (1969).[2]

The DNC incurred substantial financial obligations during the 1968 presidential campaign. The DNC has a pressing responsibility to eliminate this large indebtedness. An essential part of this effort is a widespread radio and television campaign through which political contributions will be solicited on a nationwide basis. In 1970 America, this is the only way the DNC can effectively reach large numbers of small contributors to the extent necessary to satisfy its indebtedness and to promote adequately its candidates and causes.

The DNC intends to request to purchase time on individual radio and television stations and on national networks. It anticipates that time will be requested both for the broadcast of specific programs of varying

[2] The members of the Commission were Newton N. Minow (who served as Chairman), Dean Burch, Thomas G. Corcoran, Alexander Heard and Robert Price.

durations and for spot announcements of varying durations. Some presentations—both programs and announcements—will be primarily (or solely) devoted to the solicitation of funds. Other presentations may contain comment on then-current controversial issues of public importance. For example, as part of this fund raising campaign, the DNC may wish to utilize broadcast time to offer what it considers to be viable alternatives to the policies of the present Republican Administration.

The dramatically soaring costs of conducting modern campaigns have dangerously increased the dependence of candidates and political parties upon large contributors:

—In 1956, a little over forty percent of all contributions by individuals to the Democratic Party exceeded $500. In 1968, almost eighty percent of all contributions by individuals to the Democratic Party exceeded $500.[3]

—The *Voters' Time* report points out that "between 1960 and 1964, the number of people who contributed $500 or more to national-level committees increased from about 4,000 to 6,700, and total receipts of both parties from this source increased from $5.6 million to $8.3 million."[4]

—The University of Michigan's highly respected Survey Research Center estimates that only six percent of the population made political contributions in 1968.

The DNC, like its counterpart in the Republican Party, is profoundly concerned as national candidates

[3] See Table 5, *Voters' Time, supra.*

[4] Id. at 45.

become more and more dependent on fewer and fewer contributors to whom they are forced to turn for higher and higher percentages of continually increasing campaign costs. As Leonard Hall, former Chairman of the Republican National Committee, said:

> "All of us engaged in political activity agree that every effort should be made to interest more and more individuals in political campaigns, and, in particular, to increase the number who provide financial support through their contribution. Every political leader is desirous of broadening the base of financial support. . . ." *Voters' Time, supra*, pp. 43-44.

A uniform conclusion of expert task forces and commissions that look at this problem is: the concentration of political contributions in relatively few hands presents clear and present dangers to the integrity of our political system. See *e.g.*, *Financing Presidential Campaigns, Report of the President's Commission on Campaign Costs*, p. 11 (1962); *Financing a Better Election System, Committee for Economic Development*, p. 51 (1968); *Voters' Time, supra*, p. 44 (1969).

First, such concentration may make certain candidates unduly obligated to a few special interest groups. See *Financing a Better Election System*, p. 51. *Second*, as the report of President Kennedy's Commission on Campaign Costs noted:

> "The heavy dependence of political parties in presidential campaigns upon substantial gifts from and expenditures by a relatively small number of individuals and organizations lends itself to wide-spread misinterpretations." At p. 11.

Third, it has been suggested that the erroneous impressions derived from undue concentration of political contributions may lead to a cynicism that could ultimately destroy democracy. *Voters' Time, supra*, at p. 44.

Television and radio—whose expense has been the major cause of this dangerous political situation—may also be its cure. Access to broadcast facilities is the most expensive and the most critical feature in the conduct of a present-day political campaign. In 1968, the total cost for political advertising on television and radio was approximately $90 million—or almost one-third of all money spent in political campaigning that year.[5] That $90 million is almost three times the $34 million federal budget for the Bureau of Narcotics and Dangerous Drugs; eighteen times the $5 million budget for the civil rights enforcement activities in the Department of Justice; and almost four times the $24.9 million budget of the Federal Communications Commission itself.[6] The astronomical expenditure of $90 million is a reflection of the reach and impact which political experts attribute to the broadcast media. See MacNeil, *The People Machine: The Influence of Television on American Politics* (1968); J. F. Kennedy, *A Force That Has Changed The Political scene, TV Guide*, Nov. 14, 1959.

A political organization seeking the attention and support of potential small contributors must have access to the broadcast media. Television, in particular, is unquestionably without peer in its ability to reach the nation. Television has brought the Vietnam war, racial strife and student disorder into every living room in America with consequences for our society we cannot yet fully perceive. It is only through this medium that an effective nationwide campaign such as the DNC proposes can be launched.

The importance of access to television—and the exposure which such access brings—was recently under-

[5] See Alexander and Myers, *A Financial Landslide for the GOP*, Fortune, March 1970, p. 104, 189.

[6] The Budget of the United States Government, Fiscal Year 1971.

scored by the Senate Committee on Commerce during its evaluation of amendments to the political broadcast provisions of section 315 of the Communications Act when it noted:

> "Television has become the most accepted medium of mass communication in the United States. Ninety-five percent of all American homes have television sets.
>
> "The air waves, especially those used for television, now play a dominant role in political campaigning. *During the 1968 presidential election campaign a candidate could with a single message lasting one minute, presented within one program, on one television network, reach as many as 23 million viewers of voting age—a number equal to almost a third of the votes cast in that election.* Prior to television, with the most intensive campaign, a candidate could have reached only a small fraction of that audience." S. Rep. No. 91-751 To Accompany S. 3637, 91st Cong., 2d Sess., March 25, 1970, p. 5.[7] (Emphasis supplied.)

The evidence demonstrates overwhelmingly that the use of the broadcast media is the most effective way to broaden the financial base of a political party.

One television appeal by then National Republican Committee Chairman Dean Burch, on October 19, 1964, produced what one Republican official termed "the most phenomenal outpouring" of financial political support in the history of this country. See *The Evening Star*, October 23, 1964. Within three days after this tele-

[7] The subsequent deliberations on S. 3637 on the Senate Floor contain repeated references to the critical importance of television and radio to political campaigning and deep concern of the Senate with the expense involved in obtaining adequate exposure through the use of broadcast media. See, *e.g.*, comments of Senator Pastore, 116 Cong. Rec. at S5634, April 13, 1970.

vision appeal, the Republican Party had received 70,000 letters and thirty-five hundred money orders. In all, it has been calculated that television appearances by Mr. Burch during the 1964 campaign harvested at least 100,000 contributions in amounts of less than $100. See Alexander and Myers, *The Switch in Campaign Giving*, *Fortune*, November 1965, p. 212.

Similarly, a handful of network television solicitations during September and October 1968 produced almost $800,000 in campaign funds for the Democratic nominee, Hubert H. Humphrey. These contributions, which were sent to a post office box number which was advertised *only* in those few television spots, averaged $10 apiece, and none exceeded $100.[8]

Therefore, the DNC has concluded that, if it is to achieve the broad financial base which it, as well as many respected commissions, believes to be essential to the integrity of this nation's political process, it must promptly launch a nationwide radio and television campaign of the type described.[9]

There is an Urgent Need for the Declaratory Ruling at an Early Time.

The DNC has several million dollars of debts which are long overdue. It has an urgent responsibility to satisfy these debts as promptly as possible. To develop

[8] We are informed that a recent television appeal by five United States Senators for funds to promote peace in Southeast Asia produced an estimated $100,000 in small contributions within the first two days after the telecast.

[9] Even with this campaign, it is the belief of the DNC Chairman that in the 1972 Presidential campaign, the Republican Party will have $50 million to spend, while the Democratic Party is likely to have only one-fifth of that amount or $10 million. *The New York Times*, March 29, 1970, p. 1. Without the successful implementation of the current campaign that disparity will only be increased.

and produce the materials to be used in the contemplated campaign will require the expenditure of thousands of dollars.[10] Indeed, the DNC is currently attempting to raise, independent of funds already dedicated, substantial sums to be used exclusively in the campaign. The DNC is most reluctant, particularly in view of its present financial condition, to undertake the expenditures necessary to the complete development of a successful campaign unless it can be certain that it will be able to obtain the access to the broadcast media which implementation of the plan demands. On the other hand, once the Commission gives it the assurances sought by this request, the DNC will forthwith begin to purchase time to carry out its plan.

The DNC, both over the years and in the preliminary planning of the present campaign, has had extensive dealings with broadcasters. The DNC's experiences in this area make it clear that it will encounter considerable difficulty—if not total frustration of its efforts—in carrying out its plans in the event the Comission should decline to issue a ruling as requested. By way of examples:

A. *The "Election Campaign" Policy.* The CBS television network quite recently flatly rejected a request by the DNC to *purchase* one-half hour of prime time. The DNC planned to present an issue-oriented program which would have included an appeal for contributions to the Party. CBS' position, as stated to representatives of the DNC, was that it would sell time for political purposes only during "election campaigns."

In reporting on this incident, *The New York Times* on March 22, 1970, quoted Richard W.

[10] The DNC obviously expects that the returns will justify the expense, otherwise it would not undertake the project at all.

Jencks, President of the CBS Broadcast Group, as saying that CBS' policies "do not permit the sale of time for presenting currently controversial points of view except during election campaigns."[11]

B. *The "Controversial Issue" Policy.* A common policy of broadcast stations is to refuse to sell announcement or program time for the broadcast of views on controversial issues of public importance. For example, the Post-Newsweek Stations in Washington, D. C.—WTOP-AM-FM-TV—have "long had a policy of not accepting spot announcements dealing with controversial issues, . . ." as reflected in a February 5, 1970 letter from Larry H. Israel, Chairman of the Board of the Stations, to William B. Ray of the Commission's Complaints and Compliance Division.[12] Indeed, the CBS Network policy is to this effect, as indicated above, although CBS may—it is not altogether clear—relax that policy during "election campaigns."

C. *The "Fund Solicitation" Policy.* Numerous stations have enunciated policies that neither spot announcements nor program time will be made available where the proposed user of the time intends to solicit funds, as would the DNC in this campaign. For example, the ABC Network and its owned and operated stations have a "general policy" against solicitations which can be, and is,

[11] The *Times* went on to attribute to Mr. Jencks statements about other groups—*i.e.*, supporters of the United Nations and opponents of ABM—which had recently been denied time on the basis of CBS' arbitrary policy.

[12] The Commission currently has before it a complaint by a businessmen's association against WTOP with respect to the station's policy. The instant DNC request for ruling, of course, involves much wider and more fundamental public interest considerations.

relaxed, with the company's approval.[13] What any such policy means in practice is that a station will permit its facilities to be used for solicitation by certain groups in certain circumstances.[14] Thus, stations carry public service announcements for favored groups as well as religious presentations which contain both direct and indirect appeals for funds. In fact, every commercial announcement, in the last analysis, is a solicitation for funds.

There may be still other "general policies" which would have applicability to the campaign. Certainly, the number of stations alone portends greater problems in this area than have already been encountered. In addition to the three national commercial networks, as of April 1, 1970, there were, on the air, 509 commercial VHF television stations, 180 commercial UHF stations, 4,280 standard broadcast stations, and 2,111 commercial FM stations. While several of these stations have common owners, it does not necessarily follow that every station owned by an individual or group would follow the same policies.

There are a variety of policies which any of these thousands of stations could follow to prevent the Democratic National Committee from carrying out its proposed campaign. One station might ban the campaign because it involves a solicitation of funds. Another, which permits solicitation of funds, might ban the campaign on the

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[13] *See*, for example, WBKB-TV, Chicago, Illinois, Renewal Application, File No. BRCT-21, dated August 30, 1967, Exhibit 5, § III, p. 2.

[14] The stations appear to make their exceptions in an arbitrary and capricious manner without any rational standard. We do not question the limitation of access to "responsible" groups. We do submit that under the "responsible" group de jure theory, the stations are de facto discriminatory in an unreasonable and improper way.

grounds that the proposed spot contained controversial material on a major political issue of the day. Still others might justify a ban on the ground that there was no election campaign (or no national election campaign) in process.

It is obvious that there must be a national, uniform communications policy with respect to the activities of a responsible group, such as the DNC, that would permit the kind of access through which funds could be solicited and the American people could be informed of divergent views on national issues. Without action by this Commission, there will be no such policy.

The DNC Has a Constitutional and Statutory Right to the Media Access It Now Seeks.

A broadcaster may not constitutionally adopt artificial and arbitrary barriers to access to its facilities by responsible groups. In its unanimous landmark decision, *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969), the Supreme Court emphasized that it is the public's right to hear contrasting viewpoints which is protected by the First Amendment, not the broadcaster's freedom to present only those viewpoints which accord with his own. In this respect, the Court said:

> "This is not to say that the First Amendment is irrelevant to public broadcasting. On the contrary, it has a major role to play as the Congress itself recognized in § 326, which forbids FCC interference with 'the right of free speech by means of radio communication.' Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and

purposes of the First Amendment. *It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.* See *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940); *FCC* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, 361-62 (1955); 2 Z. Chafee, Government and Mass Communications 546 (1947). *It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964); *Abrams* v. *United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). '[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.' *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964). See Brannan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harv. L. Rev. 1 (1965). *It is the right of the public to receive suitable access to* social, *political*, esthetic, moral, *and other ideas and experiences which is crucial here.* That right may not constitutionally be abridged either by Congress or by the FCC." 395 U.S. at 389-90 (emphasis supplied).

The Court also employed language that would extend to members of the public the right of access to broadcast facilities. For example, the Court said:

> "By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Govern-

> ment from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves." 395 U.S. at 389.

In a somewhat similar fashion, the Supreme Court added:

> "It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern. To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press. Congress need not stand idly by and permit those with licenses to ignore the problems which beset the people or to exclude from the airways anything but their own views of fundamental questions. The statute, long administrative practice, and cases are to this effect." 395 U.S. at 394.

This language of the Court should be contrasted with the assertion of Mr. Jencks—as reported in the March 22, 1970 edition of *The New York Times*—that CBS' policy has roots in his company's "belief that [its] news organization can give a fairer presentation" than others. As thus described by Mr. Jencks, the CBS policy explicity violates the constitutional standards set down by the Court in *Red Lion.*

The DNC submits that arbitrary barriers, contrary to the law as established in *Red Lion,* are erected to meaningful access when, for example, a national television network asserts that time for "political broadcasts" will be sold only during certain periods every other, or

every fourth, year. The DNC submits that arbitrary barriers, contrary to the law as established in *Red Lion*, are created when a local station pursues a policy of not selling spot or program time to responsible parties who wish to comment on controversial issues of public importance.[15] Finally, in this regard, the DNC submits that arbitrary and capricious barriers, contrary to the law as established in *Red Lion*, are created when a broadcaster proffers, as a reason for refusing to sell time to a responsible group, a policy that it will not permit the solicitation of funds over its facilities. These are, however, precisely the types of policies which the DNC now faces in its effort to carry out a meaningful fund-raising campaign.[16]

The DNC does not contend, and it need not contend, that broadcasters are precluded from establishing reasonable restrictions regarding the use by others of the facilities for which they hold licenses. Broadcasters can, for example, limit the use of facilities to presentations by *responsible* spokesmen. Similarly, even where responsible spokesmen are to appear, broadcasters can adopt and implement whatever procedures may be needed to ensure that the use of facilities, for example, is in good taste or does not result in the presentation of slanderous material.

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[15] The DNC submits that this is so under *Red Lion* whether a station argues that it has literally adhered to the terms of the fairness doctrine either because of the "balance" which it has achieved or because of the innocuous nature of the material which the broadcaster permits to be transmitted over the facilities to which its license pertains.

[16] On May 15, 1970, the Commission gave notice of the institution of proceedings looking to the adoption of rules, implementing *Red Lion*, which would require broadcasters, in certain situations to open up their stations to others. This is what the DNC here seeks, but in a broader context than that proceeding appears to encompass.

On the other hand, in considering what restrictions are reasonable in this area, the broadcaster and the Commission must remain mindful of the importance of broadcast media to anyone desiring to make an effective nationwide presentation. And, of course, the pronouncements by the Supreme Court in *Red Lion*—based on the public's rights under the First Amendment—would preclude the adoption of fixed and inviolate policies of the types with which the DNC is now faced.

There is a critical question of public policy, as well as constitutional law, involved here: Are the public airwaves—the most powerful communications media in our democracy—to be used to solicit funds for soap, brassieres, deodorants and mouthwashes and not to solicit funds to enhance the exchange of ideas?

The Commission is accordingly requested to rule—in order to remove a substantial uncertainty—that for a broadcaster to refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues, because of the broadcaster's "general policies" against selling time for such purposes, violates the First Amendment of the Constitution of the United States and the Communications Act.

The "Public Interest" Standards of the Communications Act Are Violated by the "General Polices" Here Involved.

Should the Commission decline to issue this ruling, a refusal of a broadcaster to sell time to the DNC should nevertheless be evaluated by the Commission in a manner adverse to the broadcaster in its consideration of the renewal application. The Commission is, thus, alternatively, requested to so rule.

Some of the public interest considerations surrounding the present proposal of the DNC have been enumerated

above. The United States Supreme Court has had occasion to address itself to the importance of the broadcast media to political expression:

> "Recognizing radio's potential importance as a medium of communication of political ideas, Congress sought to foster its broadest possible utilization by encouraging broadcasting stations to make their facilities available to candidates for office without discrimination, and by insuring that these candidates when broadcasting were not to be hampered by censorship of the issues they could discuss. Thus, expressly applying this country's tradition of free expression to the field of radio broadcasting, Congress has from the first emphatically forbidden the Commission to exercise any power of censorship over radio communication. It is in line with this same tradition that the individual licensee has consistently been denied 'power of censorship' in the vital area of political broadcasts." *Farmers Ed. & Coop. Union v. WDAY*, 360 U.S. 525, 529-30 (1959).

The Commission has frequently had occasion to comment upon the public interest considerations inherent in a broadcaster's making time available for political broadcasts. Indeed, in the *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 20 P & F Radio Reg. 1901 (1960), the Commission included political broadcasts as among the "major elements necessary to meet the public interest, needs and desires" of a station's community.

The Commission has found, moreover, in situations where no violation of section 315 of the Communications Act had occurred, that the imposition of artificial restrictions, in terms of allotted time, for the use of facilities by political candidates, was contrary to the public interest. The Commission expressed particular concern with judgments as to the amounts of time to be made

available which were "arbitrarily determined in advance" of an election and which bore no relationship to the importance of the election to which the arbitrary limitations applied. *Homer P. Rainey*, 3 P & F Radio Reg. 737 (1947).

Also pertinent are the Commission's determinations, in the context of comparative broadcast proceedings, that a licensee's practice in refusing, *inter alia*, to carry political broadcasts involving local and state political offices are indicative of a tendency to disregard local programming needs. *City of Jacksonville*, 12 P & F Radio Reg. 113, 180j (1956); see also *Loyola University*, 12 P & F Radio Reg. 1017, 1099 (1956).

Instructive as well is the following discussion in the Commission's ruling on the question of whether bipartisan spot announcements soliciting funds for political parties would be subject to the fairness doctrine:

> "In conclusion, we think two other observations are in order. First, we recognize that the announcements described by you constitute an effort to achieve the worthwhile and commendable goal of broadening the base of political contributions. The importance of this effort was recently emphasized when, on May 29, 1962, President Kennedy transmitted to the President of the Senate and the Speaker of the House of Representatives legislation designed to carry out five of the important recommendations contained in the 'Report on the President's Commission on Campaign Costs.' In his letter of transmittal, the President stated, among other things:
>
> > 'In these days when the public interest demands basic decision so essential to our security and survival, public policy should enable presidential candidates to free themselves of dependence on large contributions of those with special interests. Accordingly, it is essential to broaden

the base of financial support for candidates and parties. To accomplish this, improvement of public understanding of campaign finance, coupled with a system of incentives for solicitation and giving, is necessary.'

"Furthermore, your proposal has an objective, in common with the broad policy underlying the 'fairness doctrine'—the right of the public in a free society to be fully informed as to controversial issues of public importance, including those involving political parties and candidates. See paragraph 6 of enclosed Editorializing Report.

"Second, the question whether to present such announcements is one for the licensee, who is faced with many competing requests to allocate time for public service announcements. The Commission of course expresses no opinion as to how that time should be allocated. But the announcements in question should not be rejected upon the sole ground that the licensee would have to be fair in their presentation." *Lawrence M. C. Smith*, 25 P & F Radio Reg. 291, at 293 (1963).

The DNC is mindful of the provisions of sections 3(i)[17] and 326 of the Communications Act and of rulings, such as that issued by the Commission in its November 22, 1965 letter to the Women's Washington Strike for Peace, to the effect that:

"With respect to the refusal of the station to sell time for spot announcements, under the Communications Act, the selection and presentation of broadcast material are the responsibilities of the individ-

[17] Section 3(i) is intended, we submit, simply to exempt broadcasters from the panoply of common carrier regulation provided for in Title II of the Communications Act. It should not be permitted as a defense to a challenge to a broadcaster that its policies restricting access to the licensed facilities by others are contrary to the public interest.

ual station licensees, and Section 326 of the Act expressly prohibits the exercise of censorship powers by the Commission. . . ."

The response to those matters insofar as they pertain to this request is that they all predate the *Red Lion* decision. The Commission's regulation of broadcast station programming has undergone rapid development over the past few years which culminated in the *Red Lion* decision. It is now clear that in the field of broadcasting it is principally the public and not the broadcaster which the First Amendment is designed to protect.

Moreover, it is not necessary for the Commission to rule that a broadcaster must present programs or announcements of any particular nature proffered by any particular concern. The Commission must rule, however, that to establish arbitrary barriers to access on the part of responsible groups, such as the DNC, is contrary to the First Amendment and to the Communications Act as construed in *Red Lion*, or, in the alternative, that such barriers—in the case of the DNC's present campaign or in general—are, per se, contrary to the public interest.

CONCLUSION

To insure the basic access to the broadcast media guaranteed by the First Amendment to the Constitution and the Communications Act, and to enable the political parties of this country to broaden significantly their financial base, the Commission is hereby respectfully urged to issue as promptly as possible a declaratory ruling, providing that:

a. A broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues; or, alternatively,

b. Any such "general policy" will be taken into consideration—in a manner adverse to the broadcaster—by the Commission in evaluating whether the grant of a broadcaster's renewal application accords with the public interest.

Respectfully submitted,

DEMOCRATIC NATIONAL COMMITTEE

By /s/ Joseph A. Califano, Jr.
JOSEPH A. CALIFANO, JR.
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
General Counsel

Of Counsel:

David H. Lloyd
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

May 19, 1970

[Certificate of Service Omitted in Printing]

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

May 22, 1970

In Reply Refer to:
8330
C5-1344

American Broadcasting Company, Inc.
1330 Avenue of the Americas
New York, New York 10019

Gentlemen:

The Commission has received a "Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations" from the Democratic National Committee, a copy of which was served upon you by the Committee.

The Committee requests that the Commission rule that "a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues" or, alternatively, that such a general policy "will be taken into consideration—in a manner adverse to the broadcaster—by the Commission in evaluating whether the grant of a broadcaster's renewal application accords with the public interest."

On page 13 of its Request, the Committee refers to the American Broadcasting Company's policies in this area.

In order that it may be more fully informed, the Commission requests that you submit your comments upon the particular reference to ABC, and any other comments which you may wish to submit regarding the Request for Declaratory Ruling.

Please submit your comment within twenty days of the date of this letter.

Sincerely yours,

/s/ William B. Ray
WILLIAM B. RAY, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau

cc: Robert Kaufman, Esq.
Alfred Beckman, Esq.
Joseph A. Califano, Jr., Esq.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

May 22, 1970

In Reply Refer to:
8330
C5-1344

Columbia Broadcasting System, Inc.
51 West 52nd Street
New York, New York 10019

Gentlemen:

The Commission has received a "Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations" from the Democratic National Committee, a copy of which was served upon you by the Committee.

The Committee requests that the Commission rule that "a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues" or, alternatively, that such a general policy "will be taken into consideration—in a manner adverse to the broadcaster—by the Commission in evaluating whether the grant of a broadcaster's renewal application accords with the interest."

On pages 11, 12 and 17 of its Request, the Committee refers to the Columbia Broadcasting System's policies in this area.

In order that it may be more fully informed, the Commission requests that you submit your comments upon the particular references to CBS and any other comments which you may wish to submit regarding the Request for Declaratory Ruling.

Please submit your comments within twenty days of the date of this letter.

Sincerely yours,

/s/ William B. Ray
WILLIAM B. RAY, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau

cc: Joseph DeFranco, Esq.
Joseph A. Califano, Jr., Esq.

COMMUNICATIONS WORKERS OF AMERICA

[CWA Emblem]
(Affiliated with AFL-CIO)
1925 K Street, N.W.
WASHINGTON, D. C. 20006
[Union Label]
Telephone: FEderal 7-7711

JOSEPH A. BEIRNE, *President*

May 27, 1970

The Honorable Dean Burch, Chairman
Federal Communications Commission
Washington, D. C.

My dear Mr. Chairman:

This is in support of the request for Declaratory Ruling, filed May 19, 1970, with the Commission by the Democratic National Committee through its General Counsel, Joseph A. Califano, Jr.

It is a travesty that the broadcasting stations and networks have refused the reasonable request of the DNC for the purchase of broadcast time at standard rates. The wrong is compounded by the necessity for the DNC to pray to the Commission for relief.

The broadcasters' action to deny is contradictory to the precedents of the last six years. In 1964, the Republican National Committee purchased broadcast time to make a nationwide solicitation for political campaign funds. The Republican group did in fact receive money as a direct result of the solicitation. The broadcasters who accepted the Republican purchase of time would distort reality were they to contend that they had no means

of knowing that a funds solicitation was to be carried on the airwaves.

In 1968, the Democratic National Committee used broadcast media for funds, again with the full knowledge of the broadcasters.

The broadcasters' contention that political broadcasting will be accepted only in "political campaign" periods is specious, inasmuch as the broadcasters themselves have in effect taken it upon themselves to determine the campaign period. The Party or candidate involved should be the one who determines when the campaign opens. Political campaigns have been in progress in every month of the year.

The Communications Act and the Rules of the Commission which flow therefrom impose positive duties on broadcasters to serve their communities, one means of which is in the public affairs field. Political issues, by their very nature controversial, fall within the public affairs category.

The broadcasters also are attempting to deny the use of the airwaves on the grounds that the DNC will enter into a controversial area, in connection with the funds solicitation. This is unquestionably true. However, the broadcasters as policy accept paid advertising for funds solicitations of other non-profit organizations throughout the Nation; in many communities, the programs being supported by such organizations are quite controversial.

The report of the Twentieth Century Fund, "Voters' Time," brilliantly expressed the need for both Parties to "stimulate effective citizen participation in the processes of democratic government by encouraging small contributions to political campaigns." The two Parties require more and more contributions from ordinary citizens in order to remain responsible instruments of public policy.

It would be entirely wrong for the Parties to become the chosen instruments of special interest donors of large amounts.

I should hope that the Commission will act quickly to resolve the questions raised by the Democratic National Committee, and direct the broadcasters to make the broadcast facilities available. Since there are sufficient recent precedents, this issue appears uncomplicated. The broadcasters must be informed once again that they do not own the airwaves, but merely are the fiduciaries, to whom certain duties pertain.

Sincerely yours,

/s/ J. A. Beirne
JOSEPH A. BEIRNE
President

AMERICAN BROADCASTING COMPANIES, INC.
1330 Avenue of the Americas • New York, N. Y. 10019

LT 1-7777

EVERETT H. ERLICK
Group Vice President and General Counsel

June 10, 1970

Mr. William B. Ray, Chief
Complaints and Compliance Division
Federal Communications Commission
Washington, D. C. 20554

Your Reference 8330
C5-1344

Dear Mr. Ray:

By letter to American Broadcasting Companies, Inc. ("ABC") dated May 22, 1970, you stated that the Commission had received a "Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations" from the Democratic National Committee ("DNC"). In that pleading DNC requested a ruling that "a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues." You requested ABC to comment in particular on an allegation in said pleading (p. 13) that the ABC network and its owned and operated stations have a "general policy" against solicitations, "which can be, and is, relaxed, with the company's approval."

DNC's citation is to a portion of ABC's Standards and Policies, on file with the Commission (e.g. BAL-5733, Exhibit I-3, Attachment B, Section III), dealing with "Appeals for Charity." That provision, not here applicable, states (p. 2):

> ABC reserves the right to determine which appeals (for charity) may be made over its facilities. No direct solicitation of funds may be made without specific permission of ABC. The client is required to consult with ABC before arranging to include *appeals for charity* in any program.[1]

ABC's Standards elsewhere provide (p. 4):

> Discussion of political or controversial issues may not be included by sponsors in their *regularly scheduled programs advertising goods and services*, except when, in the opinion of ABC, it does not contravene the public interest.

Elsewhere ABC's Standards restrict as follows the solicitation of funds on *religious* broadcasts (p. 26):

> Solicitation of funds will be permitted on religious broadcasts to the extent that the following announcement may precede or follow the program proper: 'You are invited to send your free will gifts and offerings for the support of this program to (name of program, box number, city and state).'
>
> Religious sponsors may not ask the public to buy their publications.

Equally pertinent to DNC's pleading are the following provisions in ABC's Standards dealing with "Political Programs" (pp. 27-28):

> Effective with the opening of a local, state or national campaign as determined on the basis of the appropriate election laws, ABC will sell time for political programs to legally qualified candidates, their duly authorized representatives, or their *political organizations* which show substantial evidence of

[1] Emphasis supplied throughout this letter.

their activity in the campaign such as through public participation. . . .

In addition, ABC will sell time for political programs *prior to the official opening of a campaign* and starting on a date to be determined by the American Broadcasting Company, to individuals and *organizations.* ABC reserves the right to decide whether such individuals or organizations seeking to purchase precampaign time for political programs are duly qualified to discuss and have a recognized interest in the forthcoming campaign.

Also directly in point, with respect to DNC's pleading of May 19, 1970, are the following excerpts from ABC's current Standards and Policies dealing with "Controversial Issue Programming":

> The Company recognizes its responsibility in the public interest to safeguard and promote opportunity for the free discussion of controversial issues of general concern to the American people. It has and will continue to use its facilities for the presentation of the views of responsible individuals and organizations within controversial issue programs to the fullest extent consistent with the fair balance of opinion and maintenance of a sound program structure.
>
> Whenever ABC permits its facilities to be used for the presentation of one viewpoint on a controversial issue of public importance, it will afford reasonable opportunity for the presentation of contrasting views. Balance need not be achieved on the same program, but when considered on an overall basis, ABC's programming will present the contrasting viewpoints on controversial public issues.

ABC will determine what subjects are of such interest or importance as to warrant time for their presentation. ABC will also decide whether it will present a contrasting viewpoint itself, or if not, which individuals or organizations seeking time are best qualified to discuss a subject chosen for broadcast treatment or are most representative of a viewpoint selected for presentation.

Comment on or discussion of current or proposed legislation or pending litigation will be permitted only on political, news, news commentary, discussion and controversial issue programs. Comment on or discussion of pending litigation must be within the bounds of fair comment in order not to prejudice the outcome.

Absent special public interest considerations, ABC will not sell time for controversial issue programs or announcements or permit the solicitation of funds or the sale of publications on controversial issue broadcasts.

In short, absent special public interest considerations, ABC will not sell time for comment on controversial issues or for solicitation of funds.

ABC offers the following additional comments on the Request for Declaratory Ruling:

The continued strength and viability of our two party system are of vital importance. ABC has emphasized in recent Congressional hearings the importance of a wider base for political contributions—small sums from millions of Americans rather than large contributions from a few.

Of course, there are many controversial public issues and dozens of responsible organizations advocating all

shades of opinion on such issues. Were we to open the door entirely to any "responsible entity" who wished to purchase time for programs or announcements in which to espouse its point of view on controversial issues of public importance and/or to solicit funds, we think it reasonable to anticipate a flood of such requests. The obvious problems would be, in each instance, compliance with the "Fairness Doctrine" and where to draw the line.

Because the strength and viability of the major political parties are vitally important, ABC would be prepared, consistent with its other obligations, to accept such orders for time from major political parties as can be accommodated on a reasonable basis. At the same time, we propose to continue our general policy against the sale of time for controversial issue programs and announcements and solicitations for funds, absent special public interest considerations.

As a licensee, and as a responsible member of the community, ABC submits that the foregoing policies, so long as they are reasonably applied, are entirely appropriate. In its Declaratory Ruling, or by separate letter, the Commission may wish to address itself to ABC's proposed treatment of the issue.

Respectfully submitted,

/s/ Everett H. Erlick
EVERETT H. ERLICK

NATIONAL BROADCASTING COMPANY, INC.
1725 K Street, N.W., Washington, D. C., EMerson 2-4000

June 22, 1970

Howard Monderer
Washington Attorney

Hilburt Slosberg, Esq.
Office of General Counsel
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Slosberg:

Pursuant to your request for a statement on the subject, NBC has no policy which prevents it from accepting an order for program time from a major national political party during non-campaign periods for the purpose of presenting the views of the party on important public issues. We would permit a solicitation of funds for the party in such a program.

Several months ago, in discussions with a representative of the Democratic National Committee, NBC offered to make available for purchase by the Committee a prime time period on the NBC Television Network for a program of this type. NBC was subsequently advised that the Committee did not wish to proceed with the purchase.

Respectfully yours,

/s/ Howard Monderer
HOWARD MONDERER

CBS
Columbia Broadcasting System, Inc.
51 West 52 Street
New York, New York 10010
(212) 765-4321

Robert V. Evans
Vice President and General Counsel

June 22, 1970

Mr. William B. Ray, Chief
Complaints and Compliance Division
Federal Communications Commission
1919 "M" Street, N. W.
Washington, D. C. 20036

Re: Commission Reference 8330
C5-1344

Dear Mr. Ray:

This is in response to your May 22 letter requesting the comments of the Columbia Broadcasting System, Inc. on the "Democratic National Committee Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations" (hereinafter "DNC Request"). The DNC asks the Commission to rule:

> ". . . that 'a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues' or, alternatively, that such a general policy 'will be taken into consideration—in a manner adverse to the broadcaster—by the Commission in evaluating whether the grant of a broadcaster's renewal application accords with the interest.'"

CBS welcomes this opportunity to comment on the DNC Request. The DNC Request poses a fundamental chal-

lenge to the ability of a broadcast licensee to establish and follow general policies best articulated in the licensee's judgment to insure that controversial issues are covered fully and fairly. The DNC Request also calls into question long standing FCC regulatory policy in this important area. In essence, the DNC now requests, without any allegation or showing of inadequate coverage, that this Commission repudiate the regulatory philosophy it enunciated in adopting the Fairness Doctrine, *In the Matter of Editorializing by Broadcast Licensees*, and has since consistently reiterated:

> "It is apparent that our system of broadcasting, under which private persons and organizations are licensed to provide broadcasting service to the various communities and regions, imposes responsibility in the selection and presentation of radio program material upon such licensees. Congress has recognized that the requests for radio time may far exceed the amount of time reasonably available for distribution by broadcasters. It provided, therefore, in § 3(h) of the Communications Act that a person engaged in radio broadcasting shall not be deemed a common carrier. It is the licensee, therefore, who must determine what percentage of the limited broadcast day should appropriately be devoted to news and discussion or consideration of public issues, rather than to the other legitimate services of radio broadcasting, and who must select or be responsible for the selection of the particular news items to be reported or the particular local, state, national or international issues or questions of public interest to be considered, as well as the person or persons to comment or analyze the news or to discuss or debate the issues chosen as topics for radio consideration." 13 F.C.C. 1246, 1247, 25 R.R. 1901, 1903 (1949).

We endeavor in these comments to show that CBS's present method of handling controversial issues serves the public interest in obtaining full, fair and informative discussion, and that there is no need for a new compulsory carriage rule that would unbalance programming and have a host of other undesirable effects. We further demonstrate that there is no statutory or constitutional right to the relief requested by the DNC. To the contrary, the rule would contravene the statutory policy set forth in Sections 3(h) and 326 of the Communications Act.

I. The DNC Has Misunderstood CBS Policies Relating To The Presentation Of Controversial Issues. CBS Policies Insure Full And Fair Presentation Of Controversial Issues.

The DNC Request has incorrectly described CBS policies (pages 11, 12 and 17 of the DNC Request). We, therefore, outline those policies and the reasons for their adoption.

Central to CBS policies relating to the coverage of news and the expression of viewpoints on controversial issues is a fundamental commitment to objectivity in reporting the news and a recognition that the public can make informed judgments only if it is regularly exposed to the vigorous clash of viewpoints on the major issues of the day. CBS has consistently sought to maintain a fair and balanced treatment of these issues in its news and informational broadcasts.[1] In furtherance of these goals, CBS has long maintained policies which in general provide that broadcasts dealing with current controversial issues be produced under the supervision and control of CBS

[1] Indeed, we do not understand the DNC Request to question CBS' performance with respect to objective and fair coverage of issues.

News or a CBS Owned station. Only by lodging these responsibilities with our own personnel can we effectively insure that objectivity and fairness will actually be achieved. This commitment to fairness is also the basis of the long standing CBS policy not to sell time for the expression of viewpoints on public issues (except for political broadcasts as discussed below), but rather to provide significant opportunities for such discussion without charge to partisans of various viewpoints in our news and information broadcasts. In adopting this policy we concluded that we could not provide coverage of significant issues with fairness and balance if partisans with strong financial resources could preempt our facilities to present their viewpoints on issues they select. A policy of selling time to partisans would in our view necessarily distort the manner in which issues were presented to the listening and viewing public. CBS has concluded that as a licensee in a medium with a finite amount of time to provide news, information and entertainment, we best serve the public by presenting issues and viewpoints within a balanced program schedule utilizing newsworthiness as the sole criterion.[2]

CBS has built one of the world's great news organizations, with a well-deserved reputation for fairness and objectivity. CBS News and the CBS Owned stations provide regularly-scheduled hard news broadcasts. These broadcasts regularly include so-called "mini-documentaries", as well as investigative reports, sometimes in two, three or four-part series. In addition, CBS also provides regularly-scheduled weekly news interviews such as FACE THE NATION and WCBS-TV's NEWS-

[2] The problem would be exacerbated by the so-called "prime time access" rule adopted by the Commission in Docket No. 12782 which would have the effect of limiting each network's prime time (7-11 p.m.) schedule to three hours each evening with only a limited exemption for news and public affairs broadcasts.

MAKERS, numerous documentaries and special news broadcasts. Thus, for example, in the years 1968 and 1969 there were 84 CBS News special broadcasts and 28 60 MINUTES broadcasts—all in prime time. Important subjects are also dealt with on the CBS News religious programs, LOOK UP AND LIVE and LAMP UNTO MY FEET.

In the past decade the CBS News operation has grown significantly. Consider the following comparisons between the two-year period, 1968-1969, and the two-year period, 1956-1957:

—Total hours of news and public affairs broadcasting: 1,354 vs. 675—more than twice as much.

—Total prime time hours of news and public affairs broadcasting: 192 vs. 34—about six times as much.

—Total hours of regularly-scheduled hard news broadcasts, 6 p.m. - 11 p.m.: 338 vs. 130—over two and one-half times as much.

—Total hours of documentaries: 100 (all in prime time) vs. 37 (six in prime time).

In quality as well as quantity, CBS has served the public increasingly well under its policy of professional responsibility for coverage of controversial issues. In 1968, CBS News special broadcasts dealt with the issues that were being debated by all Americans, including, for example, such broadcasts as Walter Cronkite's "Report From Vietnam"; Charles Collingswood's on-the-scene "Report From Hanoi"; and "Cuba: Ten Years of Castro". There was a documentary entitled "Marijuana"; one on the plight of the American Indian entitled "The Forgotten American"; and a report on civil disorders that asked "What Happened to the Riot Report?". There was a broadcast on hucksterism in American politics, "Cam-

paign American Style"; the hard-hitting report, "Hunger In America", which led to public outcry and Congressional investigation; and the now classic seven-part series, "Of Black America". 1969 reports included documentaries on coal-mining accidents and the struggle in the United Mineworkers Union, a three-part series on the generation gap, and a report on the college turmoil. There was "Triangle of Conflict: China, Russia and the U.S." and a probing documentary on the ABM controversy.

Viewers of 60 MINUTES during the years 1968 and 1969 heard Ramsey Clark discuss policemen, saw a two-part treatment of germ and gas warfare, saw a report on racial discrimination in Great Britain, a discussion of the Pope and the pill, a report on homosexual assaults in America's prisons, a report on U.S. draft evaders in Canada, and parallel reports from both sides of the Biafran-Nigerian war, the Irish civil war and the Arab-Israeli conflict.[3]

In addition, the CBS MORNING NEWS WITH JOSEPH BENTI regularly includes interviews with government

[3] To demonstrate how fully and fairly issues are reported to the public by CBS News, we have prepared as an Exhibit to these comments a summary of that coverage on one major public issue of the day—the Indochina War and the domestic reaction to it. This exhibit examines one CBS News hard news broadcast series, THE CBS EVENING NEWS for a three-month period. We note, too, that similar coverage of the issues was presented by the CBS MORNING NEWS and other CBS hard news broadcasts. In addition, (for a period of approximately six months) it examines other CBS News television broadcasts such as documentaries, specials, and news-interview broadcasts.

Each CBS Owned television station has, of course, supplemented the national coverage in its own local news broadcasts. Also, attached as an Exhibit is a summary of the WCBS-TV coverage of this issue, again including one local hard-news broadcast series, the WCBS-TV 6:00 O'CLOCK REPORT (for a period of three months), and other WCBS-TV news broadcasts as well as WCBS-TV Editorials and Replies to those Editorials (for a period of approximately six months).

leaders and other important public figures. This discussion format in recent months has afforded such prominent Democrats as Senators Birch Bayh, Frank Church, J. William Fulbright, Gale McGee, George McGovern, Walter Mondale, and Edmund Muskie, and Congressmen George Mahon, Morris Udall, and Lester Wolff an opportunity to express their viewpoints on the controversial issues of the day.

The CBS policy of professional news responsibility does not, of course, mean that the actors in the events of the day are themselves prevented from speaking directly to the viewing public. The output of CBS News contains a high proportion of direct presentations of views by individuals—both on our regular "hard" news programs and our news interview programs such as FACE THE NATION. Indeed, television news generally achieves proportionately more direct quotation from a news subject's own lips, and less paraphrasing in the words of reporters, than any other news medium.

CBS provides a very substantial degree of direct exposure for partisans on controversial issues—always, however, through formats that are journalistically well-suited to provide a full and fair elucidation of the issues. After President Nixon's April 30 address on Cambodia, CBS News broadcast on May 3 a special report, "Where We Stand In Cambodia". In addition to news reports from Cambodia and analyses of developments by CBS News correspondents, this broadcast also presented the comments of such national leaders as Secretary of State Rogers, retired General Maxwell Taylor, retired General James Gavin, and Senators Hugh Scott, Fred Harris, John Stennis, George Aiken, William Fulbright and Mark Hatfield. On May 9, 1970 CBS News presented a special, "The Colleges, Cambodia, and the Confrontation in Washington", which included, among others, the views of Dr. Spock, Dr. Moos and Coretta King on the domestic reac-

tion to the conflict in Cambodia. On June 5, 1970, two days after President Nixon's most recent address on Cambodia, CBS News presented a live debate, "The Senate and the War", moderated by Eric Sevareid, on which six U.S. Senators debated the Indochina situation—three supporting the President and three opposing him.

Still another format was utilized by CBS News on the May 10, 1970 broadcast, "Campuses in Crisis: Three College Presidents Speak". In this news special CBS correspondent Harry Reasoner of CBS discussed unrest on college campuses, and its relationship to the war, with the presidents of the University of Michigan, Notre Dame University, and Yale University.

Nonetheless, these direct appearances remain part of our own basic effort to inform fully and fairly; they are not permitted to become the instrument of partisan advocacy. The Report of The Twentieth Century Fund Commission on Campaign Costs in the Electronic Era, heavily relied on by the DNC, aptly describes the dangers in the political sphere of substituting partisan program control for professional news responsibility:

> "Advances in broadcasting technology have made it possible to present a candidate in the best possible light, with all inept answers to hard questions edited out of the tape, with false starts and all uncertainties and human failings eliminated, all warts and blemishes removed, a single smooth image alone remaining. It is no criticism of television or radio to say that some day it may be possible to offer a wholly plausible and wholly false impression of a candidate. Broadcasting would become an impenetrable shield for a candidate, would not open a window on him through which the public could see him clearly." [4]

[4] Twentieth Century Fund, *Voters' Time*, p. 37 (New York; 1969).

These admonitions apply as much to a political party as to a political candidate. In programs prepared by CBS News, the hard questions are pressed, not ducked, and human failings are exposed, not edited out.

We agree that the First Amendment is concerned primarily with the right of the public to be informed—and it is our commitment to that ideal which has led us to adopt policies considered "arbitrary" by the DNC. Our fundamental conviction that the public can most effectively be informed through the journalistic judgments of the media was discussed by Richard W. Jencks, President, CBS/Broadcast Group in an August 11, 1969 address before the American Bar Association on the role of the press today:

> "An organ of information does not exist to serve the unrestrained freedom of speech of individual members of its public, or even of its own editorial staff; still less does it exist to be a therapeutic outlet for the frustrated. The collection and dissemination of news is and must be a professional and group effort, and its function is to serve the need of the public to be informed. Freedom of the press presupposes the opportunity of an organ of information to attempt to provide for the reader, listener or viewer—out of the welter of events and impressions which make up the daily quota of happenings—some sensemaking whole. Learned Hand once described this function in these words:
>
> > 'News is history; recent history, it is true, but veritable history, nevertheless; and history is not total recall, but a deliberate pruning of, and culling from, the flux of events. Were it possible by some magic telepathy to reproduce an occasion in all its particularity, all reproductions would be interchangeable; the public could have no choice, provided that the process should be

> mechanically perfect. But there is no such magic; and if there were, its result would be immeasurably wearisome and utterly fatuous.'
>
> "It is the function thus described that demands the intervention or professional journalists between the event and the public; it is this function which militates against the concept of news organizations as common carriers of other people's views, with no control over content."

These comments cannot present a full-length portrait of the growth and accomplishments of CBS news operations. But even this sketch should demonstrate the basic wisdom of this policy and the folly of replacing it, as the DNC Request would have this Commission do, with a governmentally imposed requirement to sell program time for discussion of issues to all comers (except, apparently, those in the vague and undefined category of the "irresponsible").

While CBS policy provides that the presentation of controversial issues be undertaken in news and informational broadcasts, the prohibition against the sale of time does not apply to broadcasts on behalf of political candidates or in connection with ballot propositions.

In exempting the sale of time to political candidates from our general policies, we recognize that the basic purpose of Section 315 of the Communications Act was to facilitate discussion of political issues by legally qualified candidates.

CBS places no limitations (except with respect to defamation and obscenity in non-315 appearances) on the use of paid political broadcast time. Paid political broadcasts may present material on any current local or national controversial issue—so long as the broadcast is on behalf of a candidate or a group of candidates. Because

ballot propositions are so involved in the electoral process and indeed in the campaigns of many candidates we made a similar exception for them in our policies.

The CBS 1968 STATEMENT OF POLICY ON POLITICAL BROADCASTS (a copy of which was furnished to both Democratic and Republican National Committees, as well as other state and local political committees in 1968) makes clear that:

> "A paid political broadcast may contain a direct appeal for funds provided it is clear that CBS is not to be involved in any way in the collection or handling of such funds." (page 17)

Indeed, the DNC Request specifically takes note of the fact that in both the 1964 and 1968 national campaigns, the major political parties made successful use of national television in the solicitation of campaign funds. To a large extent, existing CBS policies recognize the needs expressed by the Democratic Request that:

> "A political organization seeking the attention and support of potential small contributors must have access to the broadcast media."

In this spirit, CBS/Broadcast Group President, Richard W. Jencks, recently testified in support of S. 3637, to repeal Section 315 (a) as to Presidential and Vice-Presidential candidates and to reduce the cost of political campaign broadcasts.

Consistently with CBS's long standing recognition of the importance of adequate public financial support of political parties, and with direct relevance to the matters raised by the DNC Request, CBS will permit the purchase by political parties of a special category of spot announcements (i.e. up to one minute in length) for the purpose of political fund-raising. These announcements need not be on behalf of candidates or ballot propositions.

II. A Regulatory Policy Which Imposes Common Carrier Obligations on Broadcasters Would Be Contrary To The Public Interest.

CBS news policies have (1) prevented the distortion that would occur if coverage of an issue were dependent upon its financial support rather than upon its newsworthiness, (2) fostered the development of one of the world's great news organizations, and (3) provided the public with extensive coverage of controversial issues of all kinds, including a very substantial degree of direct exposure for partisans on controversial issues, to a greater extent than most other broadcast or print media.

If CBS were compelled to sell program time to partisans on the haphazard basis suggested by the DNC, the balance in programming that CBS has assiduously maintained would be jeopardized. The indulgence and interest of the viewing public are by no means unlimited. If broadcasters must sell program time to partisans, they will have correspondingly less time for other news, sports, and entertainment programs. And each broadcaster's ability to provide a fair presentation of public issues in his overall broadcast schedule will be adversely affected.

It is hard to think of a proposal more mischievous in its consequences to the public's right to learn and know.

Fair and balanced coverage of controversial issues could never emerge from an auction in which the highest bidders determined what issues to discuss and how they should be presented. Yet that is exactly the direction in which the DNC proposal would take us.

If broadcasters were compelled to sell time to "responsible entities" wishing to comment on public issues, would the public be more fairly informed about the plight of the American Indian or racism in America, about gun control or the ABM controversy, about coal-mining accidents

or air pollution? Or would the disparate financial resources of the persons interested in issues like these irreparably unbalance and distort coverage?

There are significant production costs involved in creating interesting, persuasive television broadcasts. Would it then be the responsibility of the broadcasters themselves to produce and air the material that would restore the balance—and, if so, how are top-flight professional journalists to be interested in devoting their careers to a journalism whose content is to be determined by the currency of other people's propaganda? If there are more bidders than time available, how would the networks choose among bidders, and could the Commission avoid the dangerous role of umpire reviewing the decisions made?

We appreciate that political campaigns are costly and increasingly difficult to finance. We also recognize that there is a relation between dollars spent and success or failure in an election. However, the issue in this proceeding is not a short-term problem of the DNC—its debt and the 1970 election. At stake is something more fundamental—the danger of replacing rational political discussion with one-sided presentations designed to persuade rather than to inform. Indeed, *Voters Time*, extensively cited by the DNC, cautions that:

> ". . . the democratic process requires open forums for political ideas and the widest possible dissemination of information. Letting ability to pay determine access to the great audience and fostering the development of commercial-like campaign spots rather than rational political discussions may in time subvert the democratic process."

We agree.

If the concept were adopted, what limits, if any, could a licensee apply to those seeking to purchase time? The

DNC request would rule out "arbitrary barriers" to access on the part of "responsible" groups, such as the DNC. From the requests received to purchase time on various public issues, on what basis would the licensee determine the issues and the group to be afforded access? Must the licensee, for example, sell time in 1970 to a group opposing fluoridation of water, or is that issue too remote and unimportant today? Should it strive for balance in selling time to opposing viewpoints or should it simply sell available time to the highest bidder so long as he is "responsible"? What is the scope of the licensee's discretion in determining the indicia of "responsibility"?[5] And what are the licensee's obligations if the proponents of a question wish to buy time and the opposing groups wish time, but do not have funds?[6] Is it likely that grappling with these unsolvable problems will result in the public being better informed than if broadcasters continue to have the non-delegable responsibility for full and fair coverage of controversial issues?

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[5] We can not conceive of any one desiring to purchase time who would admit to the label "irresponsible."

[6] Or the related case of groups that actually have funds but wish to expend those funds in other media. Indeed, just such a situation developed in connection with the 1967 New York State ballot issue regarding the adoption of a new New York State Constitution. In that election, groups favoring the adoption of a new State Constitution purchased spot announcements on New York City television stations. A number of groups opposed to the adoption of the new Constitution requested that the Commission issue a fairness doctrine ruling which would compel licensees carrying paid announcements in favor of the Constitution to give free time to those opposing the new Constitution. While the Commission, for procedural reasons, did not reach this issue, we believe it significant to note that several of the groups who requested this FCC ruling were conducting active advertising campaigns in New York City newspapers voicing their opposition to the adoption of the new Constitution.

Ultimately, of course, even the DNC's "common carrier" proposal requires that there be some gatekeeper to determine who will be heard, who is "responsible" and who is not, which responsible group should be sold a segment of time when not enough of this scarce resource is available for all and how much time should be sold to other partisans in the light of other program needs? Will the gatekeeper continue to be the licensee, or does the DNC contemplate that the Commission will fulfill that role through a continuing process of interpreting and elaborating the DNC rule? The DNC Request does not say, but it is obvious that the result will be to put the Commission in the business of making specific programming decisions for which the licensee is now responsible.

The DNC rule would significantly divest the licensee of responsibility for controversial issue programming and in so doing it would necessarily place that responsibility upon the Commission if a "chaotic" situation were to be avoided.[7] Our whole tradition of press freedom from undue governmental interference cries out against such a result. The DNC, concerned with its own present difficulties, has lost sight of the vital democratic principles underlying Professor Zechariah Chafee's trenchant warning:

> "Whenever anybody is inclined to look to the government for help in making the mass media do what we desire of them, he had better ask himself one antiseptic question: 'Am I envisaging myself as the official who is going to administer the policy which seems to me so good?' Justice Holmes remarked that, when socialism came, he hoped he would be 'on the committee.' You and I are not going to be on the committee which is charged with making newspapers

[7] FCC letter to Representative Ottinger, discussed in Section III below, 18 RR 2d 1031 (1970).

or radio scripts better written and more accurate and impartial. It is very easy to assume that splendid fellows in our crowd will be exercising the large powers over the flow of facts and opinions which seem to us essential to save society, but that is an iridescent dream. We must be prepared to take our chances with the kind of politicians we particularly dislike, because that is what we may get." Chafee, *Government and Mass Communications* Vol. II, p. 709.

III. There Is No Constitutional Or Statutory Right To Compel Broadcasters To Carry The DNC's Programs. To The Contrary, The Communications Act Bars The Commission From Imposing Any Such Obligation. The Commission Has Consistently Declared That There Is No Right Of Compulsory Carriage.

The constitutional and statutory arguments of the DNC, like its policy arguments, are without merit. The DNC contention is not that CBS has failed to present adequate and fair coverage of public issues, but that "responsible entities" have a "right" to purchase time for the purpose of presenting programs of their own to express views and solicit funds for carrying out political or other objectives. It suggests—mistakenly—that the "right" it asserts derives from both the Constitution and the Communications Act. As we now show, the claim is supported neither by the Constitution nor the statute, and as the Commission has consistently recognized, it is specifically barred from creating such a right.

A. There Is No Constitutional Right To Compel Carriage Of Programs On Broadcast Stations.

The DNC's suggestion that there is a First Amendment right to purchase time is insupportable. Broadcasters,

though licensed by the Commission and subject to its valid regulations, are not publicly-owned facilities, and there is no First Amendment right to purchase time on radio or television stations. This question has been settled ever since *McIntire* v. *William Penn Broadcasting Co.*, 151 F. 2d 597 (3rd Cir. 1945), *cert. denied*, 327 U.S. 779 (1946). There clergymen and religious corporations brought suit to compel a radio station to sell time to them for the broadcast of certain programs. The court denied relief, holding that plaintiffs had no First Amendment right to purchase time on the station. It stated

> "there is no reason, the FCC permitting and no violation of the anti-trust laws being involved, why the defendant may not sell time to whomever it pleases. As we have stated, Congress had confided the selection of program material to be broadcast to the taste and discrimination of the broadcasting stations.
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> * * * *
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> True, if a man is to speak or preach he must have some place from which to do it. This does not mean, however, that he may seize a particular radio station for his forum. . . . 'Unlike other modes of expression radio inherently is not available to all.'
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> * * * *
>
> "a radio broadcasting station is not a public utility in the sense that it must permit broadcasting by whoever comes to its microphones." *Id* at 600-01.

Accord, *Massachusetts Universalist Convention* v. *Hildreth & Rogers Co.*, 183 F. 2d 497, 501 (1st Cir. 1950). Similarly, in *Avins* v. *Rutgers*, 385 F. 2d 151 (3rd Cir. 1967), *cert. denied*, 390 U.S. 920 (1968), the plaintiff brought suit against the State University of New Jersey, asserting that the State University law review had violated the First Amendment by rejecting an article he

had submitted, allegedly because of its "conservative" content. The court rejected this contention, relying on the *McIntire* case.[8] There is nothing in *Red Lion Broadcasting Co.* v. *FCC* 395 U.S. 367 (1969) that indicates that *McIntire* is not good law or suggests that, apart from Section 315, there is any legal obligation for broadcast licensees to sell time. To the contrary, as we discuss below, *Red Lion* sustained long standing Commission policies that are wholly inconsistent with the right asserted here by the DNC.

Moreover, the rule proposed by the DNC would inevitably lead the Commission into the realm of censorship by requiring it to regulate broadcast access and to decide which groups were sufficiently "responsible" to merit exposure in this medium and which programs it should compel broadcasters to carry. Governmental "dictation as to what should go into particular programs" or what groups are to be heard is the very heart of censorship. Chafee, *Government and Mass Communications*, p. 641 (1965). See *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Fowler* v. *Rhode Island*, 345 U.S. 67 (1953); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951).

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[8] The district court held: "It could not be contended reasonably that the Editorial Board of Rutgers Law Review must accept for publication every treatise on law which is submitted to it. There must necessarily be a broad area for the exercise of discretion." Quoted at 385 F. 2d at 152. The court of appeals affirmed, holding (p. 153-154): "The right to freedom of speech does not open every avenue to one who desires to use a particular outlet for expression. . . . [t]he acceptance or rejection of articles submitted for publication in a law school law review necessarily involves the exercise of editorial judgment and this is no wise lessened by the fact that the law review is supported, at least in part by the State."

B. There Is No Statutory Right To Compel Carriage Of Programs On Broadcast Stations. A Commission Rule Compelling The Broadcast Of Any Program Supplied By A "Responsible Group" Would Violate The Communications Act.

The DNC claims that as a "responsible entity" it also has a statutory right to purchase time on broadcast stations. This claim has no better legal ground. Like the constitutional claim, it was explicitly rejected in the *Massachusetts Universalist* and *McIntire* cases.[9]

Moreover, for this Commission to compel carriage of the Democratic National Committee's programs would plainly violate the Communications Act. Section 3(h), 47 U.S.C. Section 3(h), explicitly states that broadcasters are not common carriers, and it explicitly bars the Commission from imposing a common carrier obligation on broadcasters. This section, together with Section 326, 47 U.S.C. Section 326, establishes that the licensee—and not the Commission—is to exercise the power of program selection.[10] See 1960 *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 25 Fed. Reg. 7291, 7294 (August 3, 1960).

Nothing in the Act or the Commission's rules is to the contrary. Proceeding from Section 315 are limited and carefully circumscribed personal rights of reply to material previously selected for broadcast by the licensee: (i) equal opportunities for political candidates; (ii) replies

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[9] Thus, for example, in *McIntire* (p. 600) the court stated: "the plaintiffs have cited no specific provisions of the Federal Communications Act which has been violated by the defendant and we can find none.

[10] Contrary to the assertion (p. 22 fn. 1) in the DNC request, as we show, Section 3(h) does far more than exempt broadcasters from Title II of the Communications Act.

to personal attacks; and (iii) replies to station political endorsements.

If a licensee affords broadcast time to a political candidate, the opponents of that candidate must be given equal opportunities. And under the Commission's rules, *if* a station broadcasts a personal attack or makes a political endorsement, a reply must be afforded. Except in these limited instances, the licensee has full responsibility as to source and content of his programs.[11]

The Congress' decision not to make the broacaster a common carrier, and its decision to make the licensee responsible for program selection, were advertent and deliberate. As the legislative history of the Act and its interpretation by the courts and the Commission show, this Congressional policy is central to the regulatory scheme.

In its consideration of the Radio Act of 1927, Congress faced and rejected the notion that broadcasters should be charged with a common carrier responsibility. The bill, as reported by the Senate committee, contained a common carrier provision.[12] This provision was ultimately re-

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[11] To be sure, the balanced programming required by the fairness doctrine requires stations to carry appropriate opposing views. But it leaves the licensee the widest discretion as to source and manner of presentation of the views. No person or group is given the right to compel carriage of its program.

[12] "If any licensee shall permit a broadcasting station to be used. . . . [to broadcast any matter for a valuable consideration], or by a candidate or candidates for any public office, or for the discussion of any question affecting the public, he shall make no discrimination as to the use of such broadcasting station, and with respect to said matters the licensee shall be deemed a common carrier in interstate commerce: Provided, that such licensee shall have no power to censor the material broadcast." S. Rep. No. 772, 69th Cong., 1st Sess. (1926), p. 4; 67 Cong. Rec. 12503 (1926).

The "common carrier" language, the requirement of "nondiscrimination" and the references to broadcasting matter for a valuable consideration and "the discussion of any question affecting

vised (creating what became Section 315) so that instead of requiring broadcast access on a common carrier basis, it merely afforded reply opportunities limited to political candidates. Senator Dill reasoned that common carrier obligations would hamper the broadcaster who would then be compelled to "accept anything and everything that was offered him so long as the price was paid." (67 Cong. Rec. 12502 (1926)). Similarly, Senator Dill opposed the provision because he feared that if discretion were taken away in this area, broadcasters:

> would have to give all their time to that kind of discussion, or no public question could be discussed. 67 Cong. Rec. 12504 (1926).[13]

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the public" were deleted on the floor of the Senate, through an amendment offered by Senator Dill (67 Cong. Rec. 12501-12502 (1926)).

[13] Senator Howell objected to the change because "to perpetuate in the hands of a comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course for Congress to pursue." (67 Cong. Rec. 12503 (1926)).

Senator Dill responded, "I sympathize with a great deal of what the Senator is saying, but I want to remind the Senator of the danger of having the words 'public questions' in the bill.

"That is such a general term that there is probably no question of any interest whatsoever that could be discussed but that the other side of it could demand time; and thus a radio station would be placed in the position that the Senator from Iowa mentions about candidates, namely, as that they would have to give all their time to that kind of discussion, or no public question could be discussed.

"As I say, I sympathize with the Senator's position; but the opposition to that was so strong in the minds of many that it seemed to me wise not to put it in the bill at this time, but to await developments, and get this organization to functioning, and the bill can be amended in the future.

"I just wanted to leave that idea with the Senator as to my reasons for taking the view I do." (67 Cong. Rec. 12504) (1926).

Debate on the conference report reaffirmed the judgments reached in the earlier debate that it would be unwise to enact a common carrier obligation.[14]

The 1927 Congress did not stop at rejecting common carrier status for licencees. It also adopted what is now Section 326 of the Communications Act. The legislative history demonstrates that by this action Congress intended to bar the Commission from abridging the right of the licensee to choose the programs that it will carry.

Even before Congress began consideration of the bill, a proposal was initially rejected that would have permitted the agency to establish a system of priorities for the selection of program material by broadcasters under which, for instance, religious or educational programs would have preference over entertainment programs.[15] When the bill which became the 1927 Act was introduced in 1926, this provision was deleted, according to Representative White—the author of the bill— because "of the fear which had been expressed by so many to me that that did confer something akin to censorship." [16] This pro-

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[14] 68 Cong. Rec. 2567 (1927). The 1927 Act did contain a provision, dropped without comment from the 1934 Act, permitting license revocation if the Interstate Commerce Commission found that a particular licensee had been guilty of discrimination with respect to charges or service. *Compare* 44 Stat. 1162, 1168, *with* 48 Stat. 1064. However, it was understood that the I.C.C. would have to find that broadcasters were "common carriers," within the meaning of the Interstate Commerce Act, and that the I.C.C. had not previously asserted that such entities were common carriers within that Act. See 67 Cong. Rec. 5559 (1926); 68 Cong. Rec. 2567 (1927).

[15] A bill authorizing the licensing authority to "prescribe. . . the priorities as to subject matter to be observed" by classes of stations and stations within classes had originally been introduced by Representative White in 1924. H.R. 7357, 68th Cong., 1st Sess. (1924).

[16] *Hearings on H. R. 5589 Before the House Committee on the Merchant Marine and Fisheries*, 69th Cong., 1st Sess. (1926).

vision having been deleted, Representative White was satisfied that the bill as it passed the House did not permit censorship, even though it contained no specific anti-censorship provision.[17]

The Senate, however, was not satisfied with an unwritten proscription. The bill as introduced in the Senate[18] contained a specific provision—which later became Section 326—barring Commission censorship. And Senator Dill, the Senate sponsor, responded to a suggestion on the floor that the bill would permit censorship by stating that the "bill does not give to the Commission the power to censor programs, but instead there is a provision in the bill which specifically prohibits the commission from censoring programs in any way."[19]

Following adoption of the 1927 Act, in 1929, the Radio Commission, in a major pronouncement on the scope of the 1927 Act and its views on its own responsibilities, rejected, as had Congress two years before, the view that broadcasters must allow access to all who seek it. It was contended that the broadcasters' obligations, like those of telephone common carriers, ran to "the sender" of messages. The Commission held, however, that "the duties of broadcasting stations are to listeners." *Great Lakes Broadcasting Co.* v. *Federal Radio Commission*, 3 F.R.C. Ann. Rep. 32, 33.

The efforts to enact a right of access were not over, however. For example, in 1934 Congressman McFadden, seeking to achieve by legislation a right substantially identical to that which the DNC seeks here in its request for a declaratory ruling, sought to forbid discrimination by any broadcasting stations against programs sponsored

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[17] 67 Cong. Rec. 5480 (1926).

[18] S. 1754, 69th Cong., 1st Sess. (1926).

[19] 67 Cong. Rec. 12615 (1926).

by any religious, charitable or educational association. H.R. 7986, 73rd Cong., 2nd Sess. (1934). The Commission opposed the McFadden bill. Chairman Sykes, testifying against the bill, began his statement by pointing out that the proposal to require access

> "is directly contrary to broadcasting as it has grown up in the United States prior to the act of 1927 and is directly contrary to the theory of broadcasting under the act under which we operate . . . ."

The Chairman also stated that the Act

> *"puts upon the individual licensee of a broadcast station the private initiative to see that those programs that he broadcasts are in the public interest* . . . . Then that act makes those individual licensees responsible to the licensing authority to see that their operations are in the public interest." *Hearings on H.R. 8301 Before the House Committee On Interstate and Foreign Commerce*, 73rd Cong., 2nd Sess. (1934), pp. 349-52.

The McFadden bill was not reported out of committee, but Chairman Sykes' testimony opposing it became—at his request—part of the record of the Congressional consideration of the Communications Act of 1934. Section 3(h) of that Act was adopted specifically declaring that broadcasters are not common carriers. Passage of this provision—based as it was on the history of the 1927 Act, the Commission's views in the *Great Lakes* case and its Chairman's testimony on the McFadden bill—constitutes a clear legislative determination that it is not in the public interest to compel carriage of programs, without licensee selection as to content.[20] To the contrary, with

[20] Other attempts to add a common carrier provision were made both before and after consideration of the 1934 Act. All of them failed. *E.g.*, H.R. 14467, 70th Cong., 2nd Sess. (1928); H.R. 6227, 73rd Cong., 2nd Sess. (1934); H.R. 3716, 79th Cong., 1st Sess. (1945).

the exceptions noted earlier, the Act and its legislative history established that "the choice of programs rests with broadcasting stations licensed by the F.C.C." *McIntire, supra,* at 599. See also *F.C.C.* v. *Sanders Bros. Radio Station,* 309 U.S. 470, 475 (1940); *Pulitzer Publishing Co.* v. *F.C.C.,* 68 App. D.C. 124, 126, 94 F.2d 249, 251 (1937).

Other legislative history shows that the general rule against compulsory carriage has particular force in the present case. First, in rejecting over the years numerous proposals to expand the equal time concept beyond candidate appearances, Congress has recognized the importance of the exercise of journalistic standards and licensee discretion in broadcasting news. In amending Section 315 of the Communications Act in 1959, Congress provided that even the equal time provision of Section 315 for political candidates would be inapplicable to certain categories of news broadcasts—an amendment which represented an increased Congressional recognition for the need of journalistic discretion in broadcasting news. In connection with the fairness provision of the 1959 amendment Congress had the benefit of the Commission's comments on proposed bills before House and Senate Committees which took the position that "when it comes to application of the overall fairness standard, the licensee can exercise discretion as to which viewpoints are entitled to be expressed and which spokesmen are entitled to be heard . . . ."[21] In the course of the floor debates on the "fairness amendment" to the bill, it was made clear

[21] See the Commission's official comments on proposed bills appearing in *Hearings on S. 1585, S. 1604, S. 1858 and S. 1929 Before the Communications Subcommittee of the Senate Committee on Interstate and Foreign Commerce,* 86th Cong., 1st Sess. (1959) p. 71 and in *Hearings on H.R. 5389, H.R. 5675, H.R. 6326, H.R. 7122, H.R. 7180, H.R. 7206, H.R. 7602 and H.R. 7985 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce,* 86th Cong., 1st Sess. (1959), p. 10.

that, as the fairness requirement was understood, it imposed only a general obligation on broadcasters to exercise their programming judgment in good faith, and was not a back door method of depriving broadcasters of discretion.[22]

Second, the relief which the DNC seeks relates to political campaigns and would, in effect, amount to an extension of Section 315 of the Act. Over the years, Congress has carefully limited Section 315 and has rejected amendments which would have extended the equal opportunities provisions of Section 315 to spokesmen for candidates and other election issues.[23] When consideration

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[22] 105 Cong. Rec. 14457 (1959) (remarks of Senators Pastore, Proxmire and Hartke); 105 Cong. Rec. 16231 (1959) (comments of Chairman Harris in response to Congressman Jones of Missouri); 105 Cong. Rec. 16227 (1959) (comments of Congressman Celler).

[23] S. 6. 71st Cong., 1st Sess. (1929) (equal opportunities for candidates, their spokesmen and political parties); H.R. 5716, 71st Cong., 2nd Sess. (1929) (similar); S. 1806, 77th Cong., 1st Sess. (1941) (equal opportunities must be afforded opposing parties when public officials discuss public questions); S. 814, 78th Cong., 1st Sess. (1943) (similar); H.R. 3595, 80th Cong., 1st Sess. (1947) (equal opportunities required for candidates, their spokesmen, political parties, when referendum questions are discussed, and for the discussion of differing viewpoints on public questions); S. 1333, 80th Cong., 1st Sess. (1947) (similar); H.R. 6949, 81st Cong., 2nd Sess. (1950) (equal opportunities for candidates, their spokesmen, or when referendum questions are discussed), H.R. 5470, 82nd Cong., 1st Sess. (1951) (equal opportunities required for candidates or their spokesmen), S. 1379, 82nd Cong., 1st Sess. (1951) (similar), H.R. 7062, 82nd, 2nd Sess. (1952) (similar); S.R. 539, 82nd, 2nd Sess. (1952) (similar); H.R. 11851, 87th Cong., 2nd Sess. (1962) (opportunities for response required when an individual is subjected to fidicule by a candidate utilizing time pursuant to Section 315); H.R. 7072, 88th Cong. 1st Sess. (1963) (equal opportunities to be afforded opponents when station editorializing favoring one candidate or opposing his opponent) H.R. 7612, 88th Cong. 1st Sess. (1963) (similar to H.R. 11851, 87th Cong. 2nd Sess.) H.R. 10135, 88th Cong. 2nd Sess. (1964) (similar to H.R. 7072, 88th Cong., 1st Sess.) H.R. 5414, 89th Cong. 1st Sess. (1965) (similar to H.R. 11851, 87th 2nd Sess.)

has been given to broadening the provisions of Section 315, Congress has made it clear that Congress itself retains responsibility. In connection with the 1959 amendments to Section 315, Congress specifically stated that it intended to continue supervision of the equal opportunities area:

> "The Congress declares its intention to reexamine from time to time the amendment to Section 315(a) of the Communications Act of 1934 made by the first section of this Act, to ascertain whether such amendment has proved to be effective and practicable. (73 Stat. 557 (1959))."

C. The Commission Has Consistently Declared That There Is No Right To Compulsory Carriage.

The DNC Request is also fundamentally inconsistent with the concept of licensee responsibility which has long been a root of this Comission's regulatory policy, as exemplified by its *1949 Editorializing Report*, 13 F.C.C. 1246, and its *1960 Report and Statement of Policy in the En Banc Programming Inquiry*, 25 Fed. Reg. 7291 (August 3, 1960). Thus, in a basic enunciation of its fairness doctrine, the Commission wrote in the *Report on Editorializing*:

> "It should be recognized that there can be no one all embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues. Different issues will inevitably require different techniques of presentation and production. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view." 13 F.C.C. at 1251. See also the material quoted above, p. 2.

This was the philosophy too of the Commission in the *1960 En Banc Programing Report:*

> "An examination of the foregoing authorities serves to explain why the day-to-day operation of a broadcast station is primarily the responsibility of the individual station licensee. Indeed, Congress provided in Section 3(h) of the Communications Act that a person engaged in radio broadcasting shall not be deemed a common carrier. Hence, the Commission in administering the Act and the courts in interpreting it have consistently maintained that responsibility for the selection and presentation of broadcast material ultimately devolves upon the individual station licensee, and that the fulfillment of the public interest requires the free exercise of his independent judgment.
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> "Broadcasting licensees must assume responsibility for all material which is broadcast through their facilities. This duty is personal to the licensee and may not be delegated. He is obligated to bring his positive responsibility affirmatively to bear upon all who have a hand in providing broadcast matter for transmission through his facilities so as to assure the discharge of his duty to provide acceptable program schedule consonant with operating in the public interest in his community."

Moreover, the very issue presented by the DNC Request was the subject of a complaint to the Commission in 1965 by the Washington Women's Strike for Peace involving a policing of Station WTOP in Washington apparently similar to that complained of in the DNC Request. The group had complained about the station's refusal to sell its spot announcements on the subject of the Vietnam war and alleged that such denial violated the First Amendment and in any case was "contrary to policies of this Commission."

After noting that "it is not the policy of the licensee to sell spot announcements concerning controversial public issues, but rather, when they are of sufficient interest, the licensee deals with them in news and public affairs programs," the Commission wrote:

> "With respect to the refusal of the station to sell time for spot announcements, under the Communications Act, the selection and presentation of broadcast material are the responsibilities of the individual station licensees, and Section 326 of the Act expressly prohibits the exercise of censorship powers by the Commission. That Section provides . . . .
>
> "Thus, the Act makes it clear that the Commission has no power to require a broadcaster to carry or refrain from carrying any particular program, or to prescribe the content of any program presented over the air. Moreover, Section 3(h) of the Act provides that '. . . a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.' In *McIntire* v. *Wm. Penn. Broadcasting Company*, 151 F. 2d 597, the U.S. Court of Appeals, Third Circuit, stated, in part, that:
>
> > 'For a radio station to refuse to sell time in which an individual may broadcast his views may be censorship but we know of no law which prohibits such a course. As we have indicated, a radio broadcasting station is not a public utility in the sense that it must permit broadcasting by whoever comes to its microphone.'
>
> "In view of the foregoing, it does not appear that Commission action concerning radio station WTOP is warranted in this instance."

Although the DNC is "mindful of the provisions of Sections 3(i) [sic] and 326 of the Communications Act and of rulings [such as the Women's Strike letter]," the

(DNC Request, p. 22), these statutory sections and rulings are dismissed with the remarkable assertion: "The response to these matters insofar as they pertain to this request is that they all predate the *Red Lion* decision." (DNC Request, p. 23). Not so easily dismissed, however, is the Comission's decision of March 24, 1970, which involved the question of compulsory carriage in connection with the right of the ABC Television Network to delete certain remarks made by Judy Collins on The Dick Cavett Show. In that ruling, it is clear that the Commission continues to recognize (after *Red Lion*) that the licensee has considerable discretion in fulfilling the obligations of the fairness doctrine, including the selection of issues, formats, and the appropriate spokesmen. Thus, the Commission stated in its Judy Collins letter:

> "Except for broadcasts by legally qualified candidates for public office, where the licensee is enjoined from censoring, the licensee is responsible for all material broadcast over his facilities, and thus can and does edit and select the material to be presented. Each licensee makes thousands of programming decisions a year—that some material "works," some does not fit in a particular program, etc.
>
> "That the material in question involves discussion of a controversial issue does not take it outside the scope of the licensee's editing and selection process. The licensee must devote a reasonable amount of time to the discussion of controversial issues of public importance, and cannot exclude from the airways views with which he disagrees. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949). As the Supreme Court stated in *Red Lion*, the licensee must . . . conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be

barred from the airways. But he is not a common carrier (see Section 3(h) of the Communications Act) and can exercise judgment as to appropriate spokesmen, time, or manner of presentation of the issue.

"This last point is, of course, crucial. A person or group cannot demand that as a matter of right its message be presented over the station's facilities. *McIntire* v. *Wm. Penn Broadcasting Co.*, 151 F. 2d 597 (3rd Cir. 1945). The licensee does not have to present programming material which he believes either will not serve the needs or interests of his listeners or will not do so as well as other programming material. *Report and Statement of Policy Re: Programming Inquiry*, 20 Pike & Fischer, Radio Regulations, 1902, 25 F.R. 7291. He is thus constantly called upon to make choices between types of programming, and then, within each type, to choose the format and person to appear. If the licensee were deemed to be a common carrier, having to present any matter brought to him which was not obscene, etc., the result would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt."

Furthermore, in considering the DNC's contention that the Commission's fairness policies and rulings which predate *Red Lion* are no longer of decisional significance, it should be emphasized that the very first paragraph of the Court's opinion in *Red Lion* states:

> "The Federal Communications Commission has for many years imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine, which originated very early in the history of broadcasting and has maintained its present outlines for some

time. It is an obligation whose content has been defined in a long series of FCC rulings in particular cases, and which is distinct from the statutory requirement of § 315 of the Communications Act that equal time be allotted all qualified candidates for public office." 395 U.S. at 369-70. [Footnote omitted.]

Similarly, the current viability of the Commission's fairness policies and rulings was explicitly confirmed by the Court's description of the 1959 Congressional action amending Section 315 of the Communications Act as a ratification of long standing FCC administrative construction of the fairness obligations.

Thus the DNC is clearly wrong in asserting that the Court in *Red Lion* contemplated the abandonment of traditional FCC fairness policies and the adoption by the FCC of a common carrier theory as set forth in the DNC Request. To the contrary, the decision ratified long-standing FCC policies in this area.

IV. CONCLUSION

CBS intends to continue to promote robust and rational discussions of issues of public importance with the widest possible dissemination of facts and contrasting opinions. As a member of the "most powerful communication media in our democracy" we understand our obligations to the public and reject the notion that the ability to pay should be a factor in the exchange of ideas on controversial public issues. We disagree that anyone with a viewpoint and a dollar in hand ought to be able to purchase broadcast time to propagandize a particular view. Stripped of all its rhetoric, that is the thrust of the DNC's Request.

CBS submits that its policy and practice insure comprehensive coverage of controversial issues—with ample op-

portunity for a full and fair discussion of a cross section of opinion. The central guiding force in our various news formats is not ratings or cost, but is the appreciation that the public has a right to know—to be informed of the news of the day—that somehow through the sifting and winnowing of fact and opinion, truth will emerge and citizens will be better able to exercise their responsibilities.

At times our news broadcasts are unpopular and criticized, but as Dr. Frank Stanton, President, CBS, recently stated:

> ". . . the fact is that tranquility is not the order of the day. Ours is a questioning, searching society—unsure, groping, running to extremes, abrasive, often violent even in its reactions to the violence of others. Time-honored traditions are being rent asunder, and almost all elements of our society are involved in one way or another. It is the duty of the media to report all this as faithfully as humanly possible—not to hide it from view or to sugar-coat the facts."

This is our call to action, a mandate that has always guided CBS, and that is fully consistent with the Commission's goals.

We therefore believe that the Commission should decline to make the ruling requested by the DNC.

Respectfully submitted,

/s/ Robert V. Evans

Wilmer, Cutler & Pickering
of Counsel

Attachments

CBS NEWS EXHIBIT

ANALYSIS OF CBS EVENING NEWS COVERAGE OF INDOCHINA WAR AND DOMESTIC REACTION IN THE MONTHS OF MARCH, APRIL, AND MAY 1970

	Mins:Secs
Sunday, March 1, 1970	
Mudd: Enemy mortars hit Luang Prabang, Laos. B-52s hit Ho Trail.	00:44
Shepard & Threlkeld: Report from Queson Valley, So. Vietnam, where six marines are accused of murdering civilians at Son Trang or Thanh Tra.	02:45
Appearing: Lt. Col. Charles Cooper, SOF,* "Civilians had attacked troops in past."	01:30
Monday, March 2, 1970	
Cronkite: Antiwar movement leaders suggest following letter of law, burying Selective Service in paper.	00:20
Cronkite: Sen. Mansfield again criticizes US in Laos.	00:22
Cronkite: Report No. Vietnamese may boycott Paris Peace talks.	00:19
Cronkite: Most of 43,000 marines in Vietnam to be withdrawn by mid-July.	00:15
Cronkite: Guerrillas blow up bridge on Highway One in Vietnam.	00:16
Cronkite: Tran Ngoc Chau's re-trial begins in Saigon.	00:24

* SOF—Sound Appearances on Newsfilm.

Mins:Secs

Monday, March 2, 1970 (Continued)

Benti: Report on dismal understaffing in Veterans Hospitals, low quality care given to Vietnam vets. 04:48

Appearing: Patient Matthew Raible, Dr. Albert Tomasulo, VA's Donald Johnson, Rep. Olin Teague, Patients Robert Muller, Patrick Sheehan, Ron Kovic.

Tuesday, March 3, 1970

Mudd: Administration to release transcript of Senate hearings on Laos. 01:33

Appearing: Melvin Laird, SOF, "No buildup in Laos." 00:24

Sen. McGovern, SOF, "Laird misleading—special forces in Laos." 00:48

Cronkite: Laotian premier and military high command in emergency meeting in Vientiane. 00:15

Cronkite: So. Vietnam troops claim they killed 323 enemy in Mekong Delta in three-week operation. 00:12

Cronkite: Americans find huge enemy cache of rice near Cambodia. 00:12

Sargent: Survivors of Tet offensive in Hue have memorial service for massacre victims. 01:15

Appearing: Maj. Robert Dash, SOF, calls it massacre. 00:16

Teacher Nguyen Duc Mai, SOF, citizens now scared of VC. 00:18

	Mins:Secs
Wednesday, March 4, 1970	
Cronkite: Sen. Ribicoff's new attack on black market money deals in SE Asia.	00:28
Cronkite: Souvanna Phouma says Laos will fall to N. Vietnam unless US continues bombing.	00:20
Kalb & Mudd: White House launches new effort to calm concern about Laos involvement.	01:40
Appearing: Laird, SOF, "No plans to use US ground forces in Laos."	00:22
Sen. Fulbright, SOF, Senate apprehensive about troops in Laos.	00:38
Thursday, March 5, 1970	
Cronkite: Last week's Vietnam casualty figures.	00:16
Threlkeld: Trans Ngoc Chau convicted again in second trial, gets 10 years.	02:08
Appearing: Tran Ngoc Chau, SOF, "I am a nationalist."	00:04
Cronkite: Paris Peace Talks—Communists charge escalation in Laos.	00:11
Sen. Muskie says Administration follows endless path to victory in Vietnam.	00:22
Friday, March 6, 1970	
Rather: Nixon issues statement giving all facts on Laos.	02:05
Kalb: Washington officials fear possible involvement of US in Thailand if Laos falls.	01:48
Mudd: Senate reaction to Nixon Laos statement: guarded.	00:34

	Mins:Secs
Friday, March 6, 1970 (Continued)	
Appearing: Sen. Cooper, SOF, "US will have to either fight or get troops out."	00:35
Sen. McGovern, SOF, "Senate must continue to get and make public information on war."	00:32
Cronkite: Saigon official says if US Embassy had backed Tran Ngoc Chau up, he would not have been prosecuted.	00:31
Saturday, March 7, 1970	
Mudd: AP says No. Vietnam holding 320, may soon release names.	00:20
Sunday, March 8, 1970	
Mudd: 27 Americans killed in Laos since 1962, White House acknowledges.	00:40
Sargent: Report from Tang Tra where military hearing may prove new American massacre of civilians, last month.	02:30
Monday, March 9, 1970	
Cronkite: White House again ups figures on Laos dead, now "less than 50".	00:40
Cronkite: Pathet Lao offer to exchange views on terms of peace proposal with Laotian government.	01:04
McLaughlin: Report on the fighting in Laos.	02:52
Cronkite: Thieu says all of SE Asia would fall to China if US pulls out.	00:23

	Mins:Secs
Tuesday, March 10, 1970	
Rather: White House will release new statement on position on school desegregation: Nixon concerned about "credibility gap" on desegregation and Laos.	02:12
Cronkite: Western newsmen in Laos get plane trip to see road being built by Chinese in Northern Laos.	00:40
Cronkite: Army accuses 5 more in My Lai massacre, including Capt. Ernest Medina.	00:23
Wednesday, March 11, 1970	
Cronkite: Vietnam action light.	00:24
Cronkite: Capt. Medina (My Lai case) appears at hearing, refuses comment.	00:20
Cronkite: Souvanna Phouma endorses peace talk proposal.	00:14
Cronkite: France calls for everybody to pull out of Laos.	00:14
Cronkite: Cambodia's Sihanouk cancels visits to Moscow, Peking, after anti-Communist demonstrations in Pnom Penh.	00:26
Thursday, March 12, 1970	
Cronkite: Last week's Vietnam casualty figures.	00:20
Cronkite: Laos Premier Souvanna Phouma says he's willing to agree to cease fire.	00:19
Cronkite: State Dept. supports French demand US and N. Vietnam both get out of Laos.	00:31
Friday, March 13, 1970	
Cronkite: Cambodia demands No. Vietnam and VC remove troops.	00:47

	Mins:Secs
Friday, March 13, 1970 (Continued)	
Cronkite: 16 helicopters lost in S. Vietnam last week.	00:14
Rowan: Interviews Capt. Medina, latest to be accused by Army in My Lai massacres.	00:48
Appearing: Capt. Ernest Medina, SOF, describes interrogation of prisoners.	01:32
Cronkite: State Dept. says it's neutral on repeal of Tonkin Gulf Resolution.	00:34
Saturday, March 14, 1970	
Mudd: Sihanouk in Moscow as deadline comes for Cambodia's demand that N. Vietnamese, VC leave country.	00:30
Mudd: Terrorist bombs explode in Saigon.	00:15
Mudd: Mansfield says he's been assured no more B-52 raids will be made on Plain of Jars.	00:18
Mudd: Washington lawyers report on Nov. 15 moratorium released.	00:20
Appearing: Ramsey Clark, SOF, charges Justice Dept. with causing violence.	01:00
Sunday, March 15, 1970	
Herman: Apparent mutiny reported aboard USS Columbia Eagle, carrying bombs to Thailand. Now anchored off Cambodia.	02:30
Mudd: Kosygin sends message to Nixon calling for halt to US military action in Laos.	00:20
Mudd: No. Vietnam, VC, Cambodian representatives to meet tomorrow in Phnom Penh.	00:30

Mins:Secs

Monday, March 16, 1970

Benton: Few facts filtering out on "mutiny" story on ship carrying arms to Thailand. One, names of men thought responsible, Clyde McKay and Alvin Glatkowski. 01:36

Appearing: Asst. Defense Secy. Daniel Henkin, SOF, All hands safe, not charging anyone with mutiny. 00:30

Cronkite: Cambodia opens talks with N. Vietnamese, VC, on Cambodian demand that troops leave country. 00:23

Cronkite: US reports loss of three planes in Laos. 00:13

Cronkite: White House confirms reports on radar installation in Laos being overrun two years ago. 00:20

Kalb: Sen. Fulbright discloses Secy. of State Rogers' testimony before Foreign Relations Committee hearings on Laos. Rogers upset. 01:16

Appearing: Sen. Fulbright, SOF, quotes Rogers that US has no plans to use troops. 00:20

Cronkite: Navy plane crashes at Da Nang, 22 killed. 00:18

Cronkite: US troops in Vietnam down to 460,800. 00:14

Cronkite: Vietnam National Assembly approves legislation for land reform. 00:20

Tuesday, March 17, 1970

Benton: 12 more officers accused in My Lai massacre, bringing total now to 14. 02:20

Appearing Lt. Gen. Peers, SOF, No evidence to indicate suppression of information but "major tragedy occurred." 00:40

	Mins:Secs
Tuesday, March 17, 1970 (Continued)	
Army Secy. Resor, SOF, all charged due a fair trial.	00:28
Cronkite: Cambodian tugs two Columbia Eagle into port of Sihanoukville, 13 crewmen still aboard.	00:32
Cronkite: Cambodia getting nowhere in efforts to get North Vietnam and VC troops out of country.	00:28
Shepard: Report on infiltration route from Cambodia in Mekong Delta area.	02:04
Appearing: Navy Lt. Armand Zeddies, SOF, sees more activity of NVA.	00:37
Cronkite: Sam Thong, US operated base in Laos, evacuated of US troops, expected to fall.	00:30
Cronkite: Sec. of State Rogers clarifies statement released by Sen. Fulbright yesterday—no *present* plans to send troops to Laos.	00:32
Wednesday, March 18, 1970	
Cronkite: Prince Sihanouk deposed in coup d'etat as ruler of Cambodia.	00:48
Raphael: Interview with Sihanouk in Paris last week.	00:20
Appearing: Sihanouk, SOF, does not blame US for coup d'etat.	00:43
Kalb: Washington keeping low profile on Cambodian coup.	01:32
Appearing: Sen. Mansfield, SOF, foresees "disintegration and chaos," would like to see Sihanouk back.	00:46

Mins:Secs

Wednesday, March 18, 1970 (Continued)

McLaughlin: Report on 24 crew members of Columbia Eagle who were put out in lifeboats. 02:22

Silver: West Point cadets pass in review as farewell to General Samuel Koster, accused in My Lai massacre. 00:42

Appearing: General Koster, SOF, Thank you for support. 00:10

Thursday, March 19, 1970

Cronkite: US recognizes new Cambodian government. 00:18

Cronkite: Sihanouk in Peking, getting royal treatment, may set up government in exile. 00:18

Cronkite: Communists at Paris talks say US in trying to enlarge Vietnam War, into Laos and Cambodia. 00:20

Cronkite: Laird says Communists could sweep across Laos. 00:15

Cronkite: Last week's Vietnam casualty figures. 00:20

Cronkite: American Div. Commander, Maj. Gen. Lloyd Ramsey, breaks arm in helicopter crash. 00:27

Cronkite: USIA opinion poll about war conducted in So. Vietnam not available for security reasons. 00:32

Cronkite: Mendel Rivers raps Army for charging 14 officers in My Lai massacre, will hold investigation. 00:30

Cronkite: Thomas Glenn Jolley, who went to Canada to avoid draft, rejected citizenship, tries to get back into country, is refused. 00:31

Cronkite: Antiwar movement demonstrations planned for this week peter out. 00:34

Friday, March 20, 1970	Mins:Secs
Cronkite: Thai troops being used in Laos.	01:00
Cronkite: Cambodia ready to crush attempt by Sihanouk to regain power.	00:22
Cronkite: Ky says Cambodia is vulnerable to takeover by N. Vietnam also that So. Vietnam artillery support to Cambodian troops was informal commanders pact.	00:34
Cronkite: Vietnam action west of Hue, and south of Da Nang.	00:23
Saturday, March 21, 1970	
Mudd: Nixon says Laos action not affecting his decisions on So. Vietnam withdrawals.	00:10
Mudd: American pilots fly scores of missions in Laos.	00:10
Mudd: Nixon said US will continue to respect Cambodian neutrality.	00:20
Sunday, March 22, 1970	
Mudd: Sihanouk to live in Peking and Moscow alternatively.	00:30
Monday, March 23, 1970	
Cronkite: Rogers says Nixon has appealed to Soviets for help in restoring peace in Laos.	00:22
McLaughlin: Report on Communists presenting peace proposals to Laotian government.	01:32
Cronkite: Two fighter planes lost over Laos in past week.	00:17
Cronkite: No. Vietnam declares support for Sihanouk in efforts to overthrow new Cambodian government.	00:26

Mins:Secs

Monday, March 23, 1970 (Continued)

Cronkite: Air Force charges two majors, twelve sergeants with violations in operating Thailand mess halls. 00:13

Tuesday, March 24, 1970

Cronkite: Helicopter shot down in Laos, 11th plane in 14 days. 00:30

Shepard: Cambodian government erasing traces of Sihanouk. 02:12

Morton: Sen. Dodd opens hearings on marijuana use in Vietnam, especially before My Lai. 00:50

Appearing: Dr. Joel Kaplan, SOF, testifies that 50% to 80% of US forces in Vietnam use marijuana. 00:18

Charles West, SOF, testifies that men did smoke marijuana night before My Lai massacre. 00:36

Cronkite: Two enlisted men testify at Long Binh court martial they saw sergeant shoot civilian at orders of First Lt. James Duffy. 00:35

Wednesday, March 25, 1970

Cronkite: Pentagon says marijuana is big problem in Vietnam, but denies link with My Lai massacre. 00:35

Cronkite: Three more charged in My Lai case—total now 25. 00:10

Cronkite: Newspaper reporting Thieu is considering coalition seized in Saigon. 00:30

Thursday, March 26, 1970	Mins:Secs
Cronkite: Vietnam peace group releases names of 34 being held in No. Vietnam, eight of which are new.	00:45
Cronkite: Allies try to talk prisoners at Paris talks, no go.	00:15
Cronkite: Last week's Vietnam casualty figures.	00:12
Cronkite: Ellsworth Bunker may end tour as Ambassador to Vietnam soon.	00:20
Cronkite: No. Vietnam, VC, closing embassies in Cambodia.	00:25
Cronkite: American planes bomb inside Cambodia.	00:10
Friday, March 27, 1970	
Cronkite: So. Vietnamese units attack Communists in Cambodia.	00:38
Threlkeld: Report on a US patrol near Cambodian border.	04:00
Cronkite: White House says Ellsworth Bunker to stay on as Ambassador to So. Vietnam.	00:15
Cronkite: American-backed troops force Communists back near Long Cheng, Laos.	00:17
Saturday, March 28, 1970	
Mudd: New Cambodian government orders mobilization.	00:30
Kalb: State Department concerned over Cambodian situation.	01:10
Appearing: Cambodian Rep. Thay Sok, SOF, believes Cambodia can defend itself.	00:20

Mins:Secs

Sunday, March 29, 1970

Shepard: Report on Cambodian response to VC moving into Cambodia and preparations for possible Sihanouk return. 02:10

Mudd: Lt. Duffy guilty of ordering murder of Vietnamese POW, court reconsiders decision when it learns that life sentence is mandatory. 00:40

Laurence: New men reporting for replacement in War Zone C, So. Vietnam. 05:35

Monday, March 30, 1970

Shepard: Report from Kompong Cham, Cambodia, where a riot led to death of two National Assemblymen and 27 of the rioters. 03:08

Appearing: Allistair Chisholm, SOF, describes riot and believes civil war is near. 00:50

Cronkite: Cambodia to ask UN to get No. Vietnam and VC to withdraw troops. 00:25

Rowan: Troop withdrawals may be slowed by affairs in Laos and Cambodia. 01:32

Cronkite: So. Vietnam guerrillas shell government camp, kill 26. 00:15

Cronkite: James Duffy guilty of murder of So. Vietnam civilian, then court learns life sentence mandatory, reduces charge to involuntary manslaughter, maximum 6 years. 00:21

Schakne: Massachusetts legislature may pass law forbidding Mass. boys to go to Vietnam, which will be court test of legality of Vietnam War. 01:32

Monday, March 30, 1970 (Continued)	Mins:Secs
Appearing: H. James Shea, SOF, says bill will protect Mass. boys and test constitutionality of war.	00:40
William Randall, SOF, believes bill unconstitutional and does not protect Mass. people; does not want to tie President's hands.	00:45
Gov. Francis Sargent, SOF, questions political motivation of bill.	00:33
Tuesday, March 31, 1970	
Reasoner: Troop withdrawal planned by White House in 2 weeks.	00:25
Reasoner: Government forces recapture Sam Thong, Laos.	00:15
Reasoner: Lt. Duffy gets six months in killing of So. Vietnamese prisoner.	00:25
Sargent: Report on people of Dai La hamlet in I Corps of So. Vietnam getting new machine to mill rice.	02:16
Appearing: Capt. Robert McKelvy, SOF, says only way to win people is to make them self-sufficient.	00:35
Wednesday, April 1, 1970	
Cronkite: Communists stage most damaging attacks in five months in So. Vietnam.	00:40
Rowan: Capt. Medina formally accused of blame for slayings of 175 at My Lai.	00:45
Appearing: Capt. Medina, SOF, says he was shocked at charges; did not order massacre.	01:05

Mins:Secs

Wednesday, April 1, 1970 (Continued)

Cronkite: Cambodia says No. Vietnamese overran outpost 5 miles inside border. 00:25

Cronkite: Laos government rejects Communist peace proposals, to offer counter-proposal. 00:20

Cronkite: Anti-antiwar march planned for Saturday, but White House creates flap by sending out letter saying it was postponed when it wasn't. 00:40

Cronkite: Massachusetts legislature passes anti-Vietnam bill. 00:17

Thursday, April 2, 1970

Cronkite: Mass. Governor signs anti-Vietnam War bill. 00:23

Appearing: Gov. Sargent, SOF, explains signing bill; wants issue to go to Supreme Court; cautions against optimism. 01:15

Cronkite: Laird makes no comment on Mass law. 00:15

Cronkite: Fulbright says we should leave SE Asia to No. Vietnam as strongest power in area. Rogers tells Foreign Relations Committee we have no intentions of getting involved in Cambodia. 01:00

Cronkite: Cambodia says American troops have no right to pursue Communists into Cambodian territory. 00:17

Cronkite: 65 more shellings of Allied bases in No. Vietnam. 00:15

Threlkeld: Report on the helicopters being increasingly used in Vietnam. 03:45

Cronkite: Last week's Vietnam casualty figures. 00:20

Cronkite: Paris peace talks — 61st session — no progress. 00:07

Friday, April 3, 1970	Mins:Secs
Cronkite: Communists shell 60 towns and bases in Vietnam.	00:37
Cronkite: Laotian troops who retook Sam Thong accused of looting it.	00:25
Shepard: Cambodian government says calm restored, frees 486 political prisoners.	01:45
Cronkite: Leaders of anti-antiwar march in Washington tomorrow schedule prayer meeting for tonight.	00:18
Saturday, April 4, 1970	
H. Walker: Anti-antiwar march in Washington, led by Rev. Carl McIntire. Appearing: Lester Maddox.	02:40
Mudd: Administration steers clear of numbers game on this march no aerial photos.	00:10
Mudd: Battle reported at Con Thien, So. Vietnam, near DMZ.	00:15
Mudd: Students taking military training in Cambodia.	00:15
Quint: Report on nature of military training in Cambodia.	03:10
Sunday, April 5, 1970	
Mudd: New Cambodian leaders may proclaim republic.	00:30
Mudd: US gunships fire on government outpost by mistake near Pleiku, S. Vietnam. Fighting near DMZ continues.	00:25
Laurence: Whispered report on action in War Zone C—a combat assault. None of the many soldiers identified.	05:50

	Mins:Secs
Monday, April 6, 1970	
Reasoner: Communists beseiging Dak Seang, Green Beret camp near Laotian border in So. Vietnam.	00:52
Laurence: Report on fighting in War Zone C, near Cambodia. This report on one company and "magic" company commander who has had only two casualties; plays it careful.	03:55
Tuesday, April 7, 1970	
Cronkite: Sen. Hart's wife convicted in war protest at Pentagon.	00:25
Cronkite: Communist spring offensive in Vietnam steps up, and assault on Dak Seang continues.	00:33
Cronkite: Heavy fighting in Vietnam and in Cambodia.	00:16
Cronkite: Five newsmen missing, believed captured by VC, include Sean Flynn and Dana Stone working for CBS.	00:17
Threlkeld: Veterans wanting higher pensions, housing, disrupt Saigon in demonstration.	01:45
Cronkite: Antiwar group releases names of 81 prisoners in No. Vietnam, eight of them new.	00:15
Wednesday, April 8, 1970	
Cronkite: Seige of Dak Seang "past crucial period," but both sides bringing in reinforcements.	00:30
Quint: Cambodians definitely at war—in Chipou, near Vietnam border.	01:55

Wednesday, April 8, 1970 (Continued) Mins:Secs

Cronkite: Columbia Eagle — hijacked munitions ship—sails from Cambodian waters. 00:30

Cronkite: Laotian Premier Souvanna Phouma asks halt to bombing except Ho Chi Minh Trail. 00:25

Thursday, April 9, 1970

Reasoner: Last week's Vietnam casualty figures, and cumulative figures for war so far. 00:40

Reasoner: US command says US soldiers have been permitted to cross Cambodia border only on courtesy visits. 00:25

Laurence: Report on Charlie Company in War Zone C, on day company refuses to follow orders of new captain. 06:25

Reasoner: White House says Nixon to make speech on Vietnam next Thursday, 9PM—CBS will televise. 00:15

Friday, April 10, 1970

Reasoner: Senate Foreign Relations Committee votes to repeal Gulf of Tonkin Resolution. 00:30

Reasoner: South Vietnamese relief battalion reaches Dak Seang. 00:22

Reasoner: 100 Vietnamese civilians killed in Cambodia—some say accident, some say massacre. 00:35

Saturday, April 11, 1970

Mudd: Senators Church and Cooper introduce legislation against use of US troops in Cambodia. 00:20

Mudd: Enemy stages new attack on Dak Seang, S. Vietnam. 00:15

	Mins:Secs
Sunday, April 12, 1970	
Mudd: No. Vietnamese attack at Dak Pek, near Cambodian border.	00:20
Shepard: Report on Fire Base Tango, near Dak Seang, which has been under attack almost constantly.	02:32
Mudd: Cambodian troops authorized to attack No. Vietnamese and VC, instead of waiting to be attacked, fight at Pra Saut.	00:25
Monday, April 13, 1970	
Rather: Nixon consults with Laird, military leaders on troop withdrawals for his speech Thursday.	02:00
Cronkite: American troops in Vietnam now at 429,000.	00:30
Cronkite: Rocket attack on Saigon, first in four months.	00:18
Shepard: Report from Tam Kanh, receiving point for casualties from Dak Seang special forces camp.	02:40
Cronkite: Charlie Company involved in near mutiny in Laurence piece 4/9/70, not to be punished.	00:25
Cronkite: Cambodia expecting attack on Svay Rieng.	00:15
Tuesday, April 14, 1970	
Cronkite: Cambodia asks for arms aid, not specifically from us.	00:22
Quint: Report on trip in Cambodia near Vietnam border where Quint and crew were almost captured by VC.	03:20

Wednesday, April 15, 1970	Mins:Secs
Schakne: Antiwar protests for April 15 in Boston.	01:10
Fromson: Antiwar protests in Cleveland.	01:10
Plante: Antiwar protests in Chicago.	00:40
Appearing: Sen. Goodell, SOF, says stop war and rebuild America.	00:15
Pappas: Antiwar protest in Colorado Springs.	01:15
Cronkite: Antiwar protest at U. of Calif. Berkeley campus.	00:20
Rather: Nixon's reaction to protests: we couldn't care less.	01:12
Cronkite: Saigon shelled for second time this week.	00:10
Cronkite: Cambodia Premier Lon Nol appeals to people to drive out Communist Vietnamese forces.	00:15
Cronkite: Many Vietnamese bodies, shot, floating down Mekong River from Cambodian territory.	00:22
Thursday, April 16, 1970	
Cronkite: Russia less cool to thought of new Geneva conference on SE Asia.	00:37
Cronkite: Cambodia appeals to Washington for arms.	00:25
Quint: Report on bodies floating down Mekong River from Cambodia.	01:30
Cronkite: Last week's Vietnam casualty figures.	00:20

	Mins:Secs
Friday, April 17, 1970	
Shepard: South Vietnamese troops moving into Cambodia, but newsmen are kept out.	02:30
Cronkite: Massacre of Vietnamese residents of Cambodia reported at Takeo.	00:30
Cronkite: Nixon to make Vietnam speech Monday evening.	00:12
Laurence: Another report on Charlie Company in War Zone C, this one concentrating on men who want to kill and men who don't.	05:00
Saturday, April 18, 1970	
Mudd: Cambodia says VC have surrounded Takeo, close to Phnom Penh.	00:20
B. Kalb: 100 Vietnamese civilians killed in Takeo by Cambodian soldiers, say survivors.	01:50
Shepard: Student demonstrators demonstrate against Thieu in Saigon.	01:10
Mudd: Secy. of State Rogers says US is seeking clarification of Soviet statement less cool to idea of new Geneva conference on SE Asia.	00:15
Sunday, April 19, 1970	
Mudd: Administration acknowledges extent of US involvement in Laos.	00:40
Appearing: Sen. Symington, SOF, says information must be publicly disclosed.	00:15
Mudd: Heavy ground fighting near Dak Seang, So. Vietnam.	00:25
Laurence: Report on Charlie Company in War Zone C—battalion and Bravo Company command post attacked, 100 enemy killed.	03:50

Sunday, April 19, 1970 (Continued)	Mins:Secs
Hart: Vietnam Moratorium Committee closing national offices, keep local offices open.	00:45
Appearing: Sam Brown, SOF, says national office has passed its useful life; work now has to be done in localities.	01:36
Monday, April 20, 1970	
Cronkite: Nixon to announce 50,000 withdrawal tonight.	00:25
Cronkite: US troops now in Vietnam—425,500.	00:08
Cronkite: Five helicopters shot down over Vietnam yesterday.	00:10
B. Kalb: Report from near Saang, Cambodia, 18 miles from Phnom Penh, taken by VC yesterday.	03:00
Cronkite: VC reject French proposal for another Geneva conference.	00:20
Tuesday, April 21, 1970	
Cronkite: Cambodian troops use Vietnamese civilians as decoys to flush out VC guerrillas.	00:45
Quint: Report from Saang—civilians having trouble getting used to war.	02:00
Cronkite: So. Vietnam force drives 2 miles into Cambodia.	00:22
Cronkite: VC call Nixon withdrawal announcement maneuver.	00:17
Cronkite: Thieu hopes withdrawal will be accompanied by more arms.	00:30

	Mins:Secs
Wednesday, April 22, 1970	
Cronkite: Defense Dept. trying to close tax loophole which makes men exempt from income tax if they only fly over Vietnam once in any month.	00:30
Cronkite: Foreign embassies in Phnom Penh considering evacuation of their dependents.	00:25
Quint: Report on Cambodian army unit's use of Vietnamese civilians as shield, to flush out VC snipers.	01:45
Cronkite: So. Vietnamese troops have entered Cambodia five times in past week.	00:13
Cronkite: Four helicopters shot down over Vietnam yesterday, four planes over Laos.	00:15
Thursday, April 23, 1970	
Rather: Nixon agrees to send arms to Cambodia —captured AK-47 rifles only.	02:00
Cronkite: Senate Foreign Relations Committee sending investigators to look into our involvement in Cambodia.	00:10
Cronkite: Saang, Cambodia, retaken by government troops, and enemy concentrates on taking Takeo.	00:25
Cronkite: Four planes, two copters shot down over Laos and Vietnam yesterday.	00:15
Cronkite: Last week's Vietnam casualty figures.	00:10
Cronkite: Paris peace talks—Communists hint at pullout.	00:20
Cronkite: Lt. Wm. Calley wins 3 month delay in court martial.	00:18

	Mins:Secs
Thursday, April 23, 1970 (Continued)	
Laurence: Last report from Charlie Company in War Zone C—Army says no more. Appearing: PFC Robert Teschker, PFC Lee Boling, PFC George Rivera.	05:00
Friday, April 24, 1970	
Pierpoint: Ron Ziegler says Cambodia conflict is not a civil war, clearly an invasion, as Nixon ponders next move there.	01:45
Cronkite: Soviet accuses US of provocations in Cambodia.	00:17
Cronkite: Communists trying to cut off Phnom Penh.	00:30
Cronkite: Cambodia chief of staff says Vietnamese living there have been fifth column for Communists.	00:17
Cronkite: South Vietnamese have crossed into Cambodia again.	00:22
Rowan: Congressional investigation of My Lai hears Major General Samuel Koster.	01:20
Threlkeld: Report from Song My on how survivors of My Lai are living today.	03:20
Saturday, April 25, 1970	
Mudd: Secy. of State Rogers says No. Vietnam violated Geneva agreements, UN charter in invading Cambodia.	00:25
Threlkeld: Report from An Thanh, So. Vietnam, on refugees returning to So. Vietnam from Cambodia.	02:35

Mins:Secs

Sunday, April 26, 1970

Mudd: Communists threaten Phnom Penh, Cambodia, as Cambodian troops re-occupy Saang. 00:30

Quint: Report from Saang, Cambodia. 03:15

Mudd: Sihanouk said to have left Peking, perhaps for Hanoi, in effort to return to rule in Cambodia. 00:15

Monday, April 27, 1970

Kalb: State Secy. Rogers gives closed door testimony before Senate Foreign Relations Committee on Cambodia. 01:30

Appearing: Sen. Fulbright, SOF, says Rogers gave impression that President would send aid to Cambodia. 00:52

Cronkite: Defense Secy. Laird feels best way to deal with Cambodia is to support So. Vietnamese pursuit. 00:35

Cronkite: Communists press offensives near Phnom Penh, and at Ang Tasom. 00:30

Cronkite: First C-130 gunship of war downed over Laos. 00:25

Tuesday, April 28, 1970

Cronkite: Red China warns US to stay out of Laos, Cambodia. 00:17

Cronkite: US to send 4,000 more captured Communist weapons to Cambodian government. 00:10

Cronkite: Cambodian troops beat back attempt to recapture Ang Tasom in Cambodia. 00:15

Quint: Report on Highway One in Cambodia, running from Phnom Pehn to Vietnam border, most of it in control of VC. 02:10

Cronkite: Five more aircraft lost in Vietnam, Laos in last three days. 00:15

	Mins:Secs
Wednesday, April 29, 1970	
Cronkite: Nixon authorizes US troops going into Cambodia.	00:25
Threlkeld: Report on US troops going into Cambodia.	01:12
Rather: US troops in Cambodia—White House report.	01:25
Rowan: US Troops in Cambodia—Pentagon report.	00:52
Kalb: US troops in Cambodia—State Department report.	00:56
Mudd: US troops in Cambodia—Congress angry.	00:45
Appearing: Senator Aiken, SOF, says he is disappointed, didn't think the President would do it.	00:10
Senator Mansfield, SOF, says he "can't stomach it," it was "most inadvisable."	00:27
Senator Stennis, SOF, says advisers are necessary.	00:22
Thursday, April 30, 1970	
Cronkite: Nixon to address nation at 9PM, CBS will carry.	00:15
Cronkite: Foreign Relations Committee calls move into Cambodia a "grave development".	00:20
Rather: Preview of Nixon's speech on Cambodia.	01:15
Webster and Threlkeld: So. Vietnam troops with American advisers have moved into Cambodia as far as Prasaut.	02:15
Cronkite: Battles continue near Ang Tasom and Takeo, Cambodia.	00:38

	Mins:Secs
Thursday, April 30, 1970 (Continued)	
B. Kalb: Cambodia Foreign Minister says he'll protest move into Cambodia.	01:00
Cronkite: Britain withholds backing Cambodian move, Russia condemns it, as do Communists at Paris peace talks.	00:22
Collingwood: On the thinking behind the Cambodian thrust.	03:35
Cronkite: Last week's Vietnam casualty figures.	00:15
Friday, May 1, 1970	
Cronkite: US troops move into Cambodia.	01:00
Laurence: Report on Charlie Company among those who moved into Cambodia.	03:00
Rather and Hart: Nixon busy with Cambodian move.	01:00
Appearing: Nixon, SOF, says protesting college students are bums; forces in Vietnam are the greatest; doesn't know if people are behind him.	01:20
Herbert Klein, SOF, says Mitchell contributed to decision but was not deciding vote.	00:36
Kalb: Congressional reaction to Cambodian move.	00:50
Appearing: Senator Thurmond, SOF, says President has all facts; deserves support.	00:25
Senator Fulbright, SOF, says meeting with President would be a good thing; Congress should advise him.	00:35

Friday, May 1, 1970 (Continued) Mins:Secs

Cronkite: Sen. Kennedy calls move into Cambodia madness. 00:10

Appearing: Sen. Kennedy, SOF, move cannot be justified. 00:50

Cronkite: Overseas reactions to Cambodian move predictable. 00:40

Dick: Demonstration against Cambodian move on University of Maryland campus spills over. 01:25

Cronkite: Other campus violent protests. 00:35

Cronkite: CBS to do one-hour special Sunday at 8PM on Cambodia. 00:06

Cronkite: 6 helicopters lost over So. Vietnam, 1 plane over Laos. 00:13

Saturday, May 2, 1970

Rowan: Laird says he'll recommend resumption of bombing of No. Vietnam if they retaliate Cambodian move. 01:05

Appearing: Laird, SOF, says this is not an enlargement of war but step toward ending it. 00:30

Webster: Troops moving into Cambodia haven't encountered much of the enemy. 02:25

Mudd: Helicopters collide in Cambodian push. 00:20

Mudd: Russian reaction to Cambodian push. 00:15

Mudd: Hanoi reaction—also charge we've bombed them. 00:30

Schieffer: Foreign Relations Committee now cool on meeting with Nixon. 01:22

	Mins:Secs
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Mudd: Hanoi reaction—also charge we've bombed them.	00:30
Schieffer: Foreign Relations Committee now cool on meeting with Nixon.	01:22

Mins:Secs

Saturday, May 2, 1970 (Continued)

Appearing: Sen. Hatfield, SOF, says Congress must either vote to withhold funds for war or declare war. 00:25

Sen. Scott, SOF, says Congress will vote funds. 00:12

Sunday, May 3, 1970

Rowan: Administration claims uncovering giant supply caches in Cambodia push, call reported raids on North Vietnam "protective reaction." 01:05

Rather: New raids, approved by Nixon, are at least upgraded "protective reaction." 01:00

Syvertsen: Report on fighting in new Cambodian push. 01:32

Webster: Action unexpectedly not heavy in Cambodian push as No. Vietnam HQ still not found. 01:51

Mudd: Agnew on FACE THE NATION questioned by Bruce Morton and George Herman on whether we're occupying Cambodia. 01:40

Appearing: Spiro Agnew; see FACE THE NATION list.

Mudd: Dr. Spock arrested in antiwar demonstration across street from White House. 00:15

Monday, May 4, 1970

Pappas: 4 killed in campus rioting at Kent State Univ. in Ohio. 03:00

Rather: Nixon issues statement of regret on Kent State. 01:10

Monday, May 4, 1970 (Continued) Mins:Secs

Cronkite: Smaller demonstrations at Univ. of Maryland, Stanford—National Student Assn. calls for student strike tomorrow to protest Cambodia. 00:40

Cronkite: China calls Cambodian push "mad provocation." 00:30

Cronkite: Kosygin protests Cambodian push in special news conf. 00:25

Cronkite: Nixon advisers are saying Communists may break off Paris peace talks. 00:22

Cronkite: Laird says raids on No. Vietnam are over, but they could start again. 00:15

Cronkite: Communists move toward Phnom Penh in Cambodia. 00:50

Laurence: Report that Communist HQ in Cambodia may have been found. 02:00

Morton: Foreign Relations Committee, skeptical, agrees to White House briefing, along with House Foreign Relations Comm. 01:20

Appearing: Sen. Fulbright, SOF, feels meeting subverts independent judgment of Congress more interested in consultations then briefings. 00:30

Tuesday, May 5, 1970

Rather: Nixon meets with Congressional Armed Services, Foreign Relations Committees on Cambodia. 00:53

Appearing: Sen. Tower, SOF, says invasion was necessary move to shorten war. 00:25

Sen. Schweiker, says war is tearing country apart; cannot support it. 00:20

	Mins:Secs
Tuesday, May 5, 1970 (Continued)	
Kalb: Rogers, Laird, opposed Cambodian push.	01:25
Cronkite: Air raids on No. Vietnam were followed by one more Nixon didn't know about.	01:25
Cronkite: Student strikes reported in 114 colleges.	01:00
Cronkite: Mrs. Nixon calls off trip, and Nixon calls off weekend trip, because of demonstrations.	00:30
Cronkite: Cambodia approves Cambodian push.	00:13
Cronkite: Allies launch new push at third point on Cambodian border, farther north.	00:15
Syvertsen: Allies uncover major enemy base in Cambodia.	01:30
Cronkite: U Thant calls for Indochina conference.	00:12
Cronkite: British Labourites say Cambodian push could hamper withdrawal plans.	00:17
Cronkite: So. Vietnamese schools, colleges closed fearing anti-Thieu demonstrations.	00:15
Cronkite: Tran Ngoc Chau, Thieu enemy, sentenced to 10 years two months ago, has trial declared unconstitutional.	00:21
Wednesday, May 6, 1970	
Cronkite: No. Vietnam may be launching counter-offensive.	00:25
Shepard: Report from the scene as new attack into Cambodia is launched. Soldiers feel unprepared.	03:20
Cronkite: House rejects antiwar amendments by large votes.	00:15

Wednesday, May 6, 1970 (Continued)	Mins:Secs
Cronkite: First shipment of rifles to Cambodia completed.	00:15
Cronkite: Laird, Rogers say they supported Nixon's move into Cambodia.	00:25
Cronkite: No. Vietnamese call off today's peace talks.	00:20
Cronkite: Troops ordered into Saigon as unrest appears to be growing.	00:22
Morton: Antiwar march on Washington planned for Saturday.	02:00
Thursday, May 7, 1970	
Reasoner: White House says troops in Cambodia captured major base complex 25 miles north of Snoul.	00:45
Laurence: Report on US troops near Snoul—making friends.	01:30
Duvall: Report on US troops in Snoul—making no friends.	01:30
Reasoner: So. Vietnam plans to send boats up Mekong River to Phnom Penh.	00:50
Reasoner: Last week's casualty figures from Vietnam.	00:25
Morton: Demonstrators, officials, still stalemated over location of weekend antiwar demonstration in Washington.	02:20
Reasoner: 136 colleges across country closed because of war protests.	00:20

	Mins:Secs
Friday, May 8, 1970	
Cronkite: Effects of Nixon Cambodian move—schools closed, thousands expected at Washington rally tomorrow.	00:50
Schorr: Congress doves stay behind in general exodus to align selves with protestors.	01:00
Appearing: Sen. Percy, SOF, says politicians would listen to youth if they campaigned.	00:15
Sen. McGovern, SOF, only effective way to end war is constitutional.	00:22
Sen. Muskie, SOF, says we need to withdraw from Vietnam to rebuild our country.	00:18
Cronkite: 250 in State Dept. express concern, apprehensive over Cambodian push.	00:16
Schoumacher: Washington officials compromise with demonstrators, will allow meeting on Ellipse.	02:30
Cronkite: J. Edgar Hoover says Communists were in last November antiwar rally.	00:20
Dean: New York construction workers break up antiwar rally on Wall Street.	02:00
Plante: Ohio students march on State Capital in demonstration.	01:10
Cronkite: Big battle just south of DMZ in So. Vietnam.	00:35
Cronkite: Allies don't expect to find Cambodian Communist military headquarters now.	00:15

Friday, May 8, 1970 (Continued)	Mins:Secs
Cronkite: Thieu says he has no deadline for withdrawal from Cambodia.	00:15
Culhane: Boston area students campaigning to get people to send antiwar letters, cards, telegrams to Congress.	03:00
Saturday, May 9, 1970	
Hart: Washington antiwar protest—hot day.	02:30
Schieffer: SDS meeting at Labor Dept. cooled by demonstration marshals.	01:15
Rather: Nixon got up early, went to Lincoln Memorial, talked to students worked during day.	01:25
Mudd: Administration issues list of captured equipment in Cambodian push.	00:25
Pierpoint: Speeded-up withdrawal not answer to Cambodian push critics, Nixon aides say.	01:20
Mudd: Sihanouk, interviewed in Peking by Australian newsman says Communists less of threat to Cambodia than So. Vietnam.	00:30
Appearing: Sihanouk, SOF, says So. Vietnamese want territory in Cambodia; Americans will be defeated.	02:10
Mudd: US, So. Vietnamese boats move up Mekong River.	00:30
Shepard: Allied troops advance in Fishhook area.	02:25
Mudd: Demonstrations against US Cambodian push in London, Berlin.	00:20
Mudd: Mass. lawmaker, author of anti-Vietnam war bill, James Shea, shoots self.	00:20

Mins:Secs

Saturday, May 9, 1970 (Continued)

Morton: Students from conservative Moravian College in Pa. go to Washington to join antiwar protest. 04:20

Sunday, May 10, 1970

Schoumacher: Washington back to normal after antiwar protest. 01:20

Schieffer: Interviews students who talked to Nixon early yesterday morning at Lincoln Memorial. 02:00

Pierpoint: White House satisfied with how yesterday's antiwar protest went.

Mudd: Administration hopes to have only volunteers in Vietnam by 1972. 00:30

McLaughlin: Neak Luong, Cambodia, captured in Mekong River push. 02:40

Quint: Report on Mekong River push into Cambodia. 02:00

Monday, May 11, 1970

Cronkite: Laird says Nixon deadline for Cambodia withdrawal will be met. 00:25

Benton: Senate Foreign Relations Committee approves cutting off funds for Cambodia after June 30. 01:20

Appearing: Sen. Frank Church, SOF, says "mistaken war should not be won; crisis in our country; Congress must take initiative. 00:45

Monday, May 11, 1970 (Continued) Mins:Secs

Morton: Students lobbying in Congress against Cambodia. 01:00

Kalb: Students lobbying in State Dept. against Cambodia. 02:20

Appearing: Yale President Kingman Brewster, SOF, says system is not working and will turn activists into revolutionaries. 01:00

Cronkite: George Wynn, Jr., Navy captain's son, dies in San Diego after burning self to protest Cambodia. 00:30

Dean: Construction workers demonstrate for war again in lower New York. 02:25

Cronkite: So. Vietnam boats traveling up Mekong River arrive in Phnom Penh. 00:30

Cronkite: US advisers went along on above trip —beyond 22-mile limit. 00:20

Shepard: US company in Cambodia comes upon recently abandoned enemy camp. 02:36

Webster: Thieu says So. Vietnam will return to Cambodia if necessary. 00:25

Appearing: Thieu, SOF, says ARVN might return to Cambodia later. 00:30

Cronkite: Rocket attack on Saigon. 00:12

Cronkite: Xuan Thuy leaves Paris peace talks for Hanoi, will return talks to continue. 00:22

Cronkite: Souvanna Phouma says Communists have launched new offensive in Laos. 00:17

	Mins:Secs
Tuesday, May 12, 1970	
Rowan: Laird tells Senate Armed Services Comm. troops are already being withdrawn from Cambodia.	01:05
Appearing: Laird, SOF, says US troops will all be out by end of June; all Nixon's pledges have been fulfilled.	01:20
Cronkite: Retired Lt. Gen. James Gavin says Cambodia could lead to ultimate US-China confrontation.	00:40
McLaughlin: Report on So. Vietnam fleet moving up Mekong River beyond Phnom Penh.	03:10
Culhane: Univ. of Maine blood drive for Vietnam.	02:36
Wednesday, May 13, 1970	
Cronkite: No. Vietnam counterattacks in Cambodia push.	00:30
Shepard: Huge ammunition cache found in Cambodia.	02:30
Cronkite: Pentagon says enemy in Cambodia failed to follow orders to stand and fight.	00:25
Cronkite: Senate opens debate on US involvement in Cambodia.	01:00
Schoumacher: Student groups lobby against war in Justice Dept.	01:10
Appearing: Atty. Gen. Mitchell, SOF, says more unrest now than ever before; "dissent is a good thing" but changes must take place within the system.	01:15

Thursday, May 14, 1970 Mins:Secs

Mudd: Nixon sends Laird, Kissinger, State Underscretary Richardson to Capitol Hill to lobby against new antiwar bill. 01:30

Appearing: Sen. Griffin, SOF, is against amendment; enemy has to believe President. 00:35

Sen. Goodell, SOF, reported that Laird and Kissinger said operation in Cambodia was successful. 00:25

Sen. Baker, SOF, says basis of cooperation between Congress and President was laid. 00:25

Cronkite: Laird says threat from Cambodia withdrawn. 00:30

Cronkite: Last week's Vietnam casualty figures. 00:45

Cronkite: New offensive launched against Cambodia. 00:20

Laurence: First Air Cav. Major Gen. Elby Roberts says farewell to troops. 03:00

Cronkite: Russia asks for joint Russian-Chinese policy on Indochina. 00:20

Rather: Nixon awards medals at White House. 01:00

Kalb: Ellsworth Bunker testifies before Senate Foreign Relations Committee. 01:20

Appearing: Ellsworth Bunker, SOF, says State Dept. policy forbids open hearings. 00:05

Sen. Fulbright, SOF, says Comm. discovered H-2 rifles were sent to Cambodia. 00:35

Cronkite: Paris peace talks mark second anniversary. 00:30

	Mins:Secs
Friday, May 15, 1970	
Cronkite: Senate continues debate on Cambodia fund cutoff amendment.	00:35
Appearing: Sen. Scott, SOF, feels amendment is contributing to polarization of country; wants compromise.	01:00
Rather: Nixon in Florida opposes antiwar amendment.	01:20
Cronkite: So. Vietnam says Highway One in Cambodia to Phnom Penh is now clear.	00:17
Cronkite: Communists attack in NE Cambodia.	00:20
Threlkeld: Report on US forces' continued search for COSVN in Cambodia.	02:15
Cronkite: Armed Forces Day programs across country cancelled.	00:20
Saturday, May 16, 1970	
Mudd: Communists enter Kompong Cham, Cambodia.	00:55
Schakne: Antiwar demonstrations cast shadow over Armed Forces Day at Fort Dix, New Jersey.	01:25
Davis: Antiwar demonstrations cast shadow over Armed Forces Day at Fort Bragg, No. Carolina.	01:00
Pappas: Antiwar demonstrations cast shadow over Armed Forces Day at Great Lakes Naval Training Station, No. Chicago, Illinois.	01:00

Sunday, May 17, 1970	Mins:Secs
Mudd: Allies launch new drive into Cambodia.	00:35
Miller: Communists withdraw from Kompong Cham, then attack again.	01:10
Syvertsen: Continuation of above Miller report.	01:30
Mudd: 11 Pacific nations meet in Djakarta, call for withdrawal from Cambodia.	00:15
Mudd: Sen. Mansfield on FACE THE NATION says he'll co-sponsor McGovern-Hatfield bill, calling for no funds for Indo-China after next year.	00:30
Mudd: Agnew criticizes Mansfield move, students.	00:15
Schieffer: Antiwar students settling in Washington for lobbying.	03:10
Mudd: Two enlisted men accused in My Lai massacre say they're not allowed to choose own attorneys.	00:25
Monday, May 18, 1970	
Cronkite: Communists strike 22 miles from Phnom Penh.	00:20
Kalb: Laird admits to Senate Foreign Relations Comm. US advisers have been in Laos.	01:30
Appearing: Laird, SOF, says no US forces operating in Laos; Cambodian incursions will not harm SALT talks.	00:50
Sen. Gore, SOF, asks Laird question.	00:06
Sen. Fulbright, SOF, asks Laird question.	00:15
Cronkite: Herb Klein, in Chicago press conference, tells about vast amounts of material captured in Cambodia.	00:25
Appearing: Klein, SOF, says 16 times normal amount of material captured.	01:20

Mins:Secs

Monday, May 18, 1970 (Continued)

Rowan: Clark Clifford comes out against Cambodian push. 00:10

Appearing: Clifford, SOF, says Cambodia operation will spread war; Nixon has not learned lessons of past five years. 01:30

Cronkite: China denounces allied drive into Cambodia; it's Ambassador won't meet ours in Warsaw this week as a protest; it says the war in So. Vietnam can go for 100 years. 00:30

Tuesday, May 19, 1970

Morton: Senate continues debate over Cooper-Church antiwar amendment. 01:30

Appearing: Sen. Allott, SOF, feels that amendment is politically motivated. 00:30

Sen. Church, SOF, says it is not partisan and does not undermine President. 00:30

Cronkite: Sen. Mansfield says administration has violated congressional ban on involvement in Laos. 00:18

Cronkite: Communists shell bases in So. Vietnam. 00:16

Shepard: Report on Saigon troops advancing in Cambodia. 02:15

Cronkite: American trade exhibit opened in Stockholm, Trade Minister makes anti-Cambodian push remarks. 00:30

Wednesday, May 20, 1970

Dean: Construction, trade unions stage gigantic pro-Nixon rally in New York. 01:40

		Mins:Secs
Wednesday, May 20, 1970 (Continued)		
Benton:	New York lawyers go to Washington to lobby against war.	01:00
Appearing:	Francis Plimpton, SOF, "War too important to be left to President."	00:25
	Sen. Dole, SOF, says amendment is badly times; is political.	00:33
Cronkite:	3,000 So. Vietnam troops cross into Cambodia in new push.	00:25
Syvertsen:	Report on one battle in Cambodia, from the Cambodian Army's side.	02:20
Kalb:	State Department says So. Vietnam troops probably won't leave Cambodia on Nixon's deadline.	01:10
Cronkite:	Sen. Scott takes soft compromising line on antiwar amendment; Sen. Griffin calls it affront to Nixon.	00:30
Cronkite:	Mao says danger of new world war exists.	00:20
Thursday, May 21, 1970		
Mudd:	Senators Cooper and Church soften language of their anti-Cambodia amendment, hoping for more support.	02:00
Cronkite:	So. Vietnamese troops drive deeper into Cambodia, and Ky says they won't leave June 30th, prompting discussion in Washington and Phnom Penh.	01:30
Cronkite:	Last week's Vietnam war casualty figures.	00:17
Webster:	Long piece answering Pentagon, White House charges that a story, showing an atrocity, originally broadcast November 3, 1969, might have been faked.	10:30

Mins:Secs

Friday, May 22, 1970

Cronkite: Laird says So. Vietnamese in Cambodia shouldn't be held to any firm timetable for leaving. 00:45

Cronkite: Administration still opposes revised anti-Cambodia amendment in Senate. 00:07

Cronkite: US helicopters attack So. Vietnam unit by mistake, kill nine. 00:10

Shepard: Report on one company in Cambodia that has met enemy 20 times in 14 days. 02:10

Cronkite: Communist financial expert defects to Saigon. 00:17

Cronkite: White House denies it's investigating CBS News, replying to piece last night. 00:45

Saturday, May 23, 1970

Mudd: So. Vietnam sends 7,000 more troops to Cambodia, will keep them there as long as necessary. 00:20

Duvall: Cambodian soldiers kept prisoners by VC two months freed by So. Vietnamese. 02:45

Mudd: Hugh Scott discounts Saigon saying it'll stay in Cambodia as bombast. 00:25

Culhane: Report on college students working within system for peace, getting haircuts, organizing computer systems to elect peace candidates. 05:15

Appearing: Fred Miller, Ned Claxton, Bill Hendricks, Douglas Arnett, Lewis Kaden, Rep. Edward Patton.

Sunday, May 24, 1970	Mins:Secs
Rather: High administration official says criticizers of Cambodia policy in Administration should resign.	01:40
Mudd: Appeal by Gen. Abrams led to Cambodian push.	00:20
Webster: Report on a trip in Cambodia in which Webster and his crew nearly got captured by Communists, but talked their way out of it.	02:30
Drinkwater: Report on antiwar movement's efforts to aid in draft evasion in Oakland, California.	06:35
Monday, May 25, 1970	
Cronkite: Cambodian For. Min. Yem Sambaur says he'll ask US, So. Vietnam to stay as long as war lasts.	00:23
Cronkite: Administration officials say we'll be out of Cambodia a week earlier than expected.	00:30
Cronkite: Sihanouk flies from Peking to Hanoi, but Hanoi says each country's people must liberate themselves.	00:22
Cronkite: Fatalities in Cambodia pass 200 mark.	00:13
Shepard: Report on Bravo Company, 7th Air Cav. Reg., 1st Air Cav., which has had heavy casualties in Cambodia.	03:30
Tuesday, May 26, 1970	
Cronkite: Communist resistance stiffening in Fishhook, Cambodia.	00:22
Cronkite: So. Vietnamese have pulled 16,000 troops out of Cambodia.	00:12

	Mins:Secs
Tuesday, May 26, 1970 (Continued)	
Cronkite: So. Vietnam, Cambodian foreign ministers talking in Saigon about resuming diplomatic relations.	00:12
Fromson: Romney goes to Chicago Presbyterian convention to justify Cambodia.	01:00
Appearing: Romney, SOF, compares Cambodia with our reaction if Russians were in Canada.	01:05
Cronkite: Senate votes on conciliatory amendment to anti-Cambodia bill, passes it 82 to 11.	00:40
Cronkite: State Dept. says small arms shipments to Cambodia have begun, to total 8 million.	00:15
Wednesday, May 27, 1970	
Cronkite: US bombs targets in North Vietnam Monday.	00:30
Cronkite: Five more helicopters lost in So. Vietnam.	00:10
Shepard: Bravo Company, which Shepard has been following, takes Hill 423, names it Shakey's Hill, after one of company killed in battle.	03:40
Cronkite: Senate Rules Comm. says Sen. Hatfield's franking privilege was used illegally to send out antiwar letters—he'll pay $2,175 postage.	00:22
Cronkite: Laird hopes to exceed Nixon's Vietnam withdrawal figure of 150,000 by May by 30,000.	00:22

Wednesday, May 27, 1970 (Continued)	Mins:Secs
Cronkite: Cambodian gov't. puts together alliances with Thailand, So. Vietnam.	00:30
Cronkite: President Thieu is interviewed by N.Y. TIMES Correspondent Terence Smith for Educational TV.	00:45
Appearing: President Thieu, SOF, says So. Vietnamese troops will stay in Cambodia but without much US support.	01:15
Thursday, May 28, 1970	
Kalb: Senate to vote on anti-Cambodia amendment Tuesday; Sen. Dole predicts Nixon will veto it.	00:45
Appearing: Sen. Dole, SOF, says Nixon will veto because it takes away his powers to protect troops.	01:30
Cronkite: Rep. Silvio Conte says State Secy. Rogers censored his testimony on Cambodia before House in the record, not for security, but to avoid embarrassment.	00:35
Cronkite: Last week's Vietnam war casualties.	00:25
Cronkite: Communists cut Highway 200 miles from So. Vietnam border in Cambodia.	00:16
Cronkite: Cambodians repulse Communist attack on Prey Veng.	00:13
Cronkite: Cambodia, Thailand resume diplomatic relations, Thailand may help in defense of Phnom Penh.	00:30

	Mins:Secs
Friday, May 29, 1970	
Cronkite: Prey Veng, Cambodia, scene of big battle between Communists and Cambodian-So. Vietnamese troops.	00:27
Cronkite: Communists blow up bridge on highway between Saigon and Phnom Penh.	00:15
Cronkite: VC using toads in war—throw them into Cambodian camps, Cambodians open fire, disclosing positions.	00:22
Cronkite: Students demonstrate against Thieu in Saigon.	00:25
Saturday, May 30, 1970	
Mudd: VC attacks Da Lat, So. Vietnam.	00:30
Rather: Nixon summons top military advisers from Washington, So. Vietnam, Honolulu to Western White House for conference tomorrow.	02:30
Sunday, May 31, 1970	
Rather: Nixon meets top military advisers, White House trying to play it down.	01:10
Quint: Report on VC attack on Da Lat, So. Vietnam.	03:00
McLaughlin: Report on VC attack on Da Lat, So. Vietnam.	00:50

Comments of CBS

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CBS EVENING NEWS

Comments by Eric Sevareid
on Indochina War and Domestic Reaction

March, April, May 1970

	Mins:Secs
Monday, March 30, 1970	
Sevareid: On worsening crisis in Cambodia, and Nixon's troubles on troop withdrawals because of it.	02.32
Tuesday, March 31, 1970	
Sevareid: On the nation's labor problems, inflation, troop withdrawals and military cutbacks.	02:15
Thursday, April 2, 1970	
Sevareid: On French proposal to treat Vietnam, Laos, Cambodia as one war, negotiate between big powers.	02:35
Tuesday, April 21, 1970	
Sevareid: On Nixon troop withdrawal announcement.	02:32
Thursday, April 23, 1970	
Sevareid: On two foreign crisis areas, Cambodia and Trinidad, with emphasis on Trinidad.	02:36
Monday, April 27, 1970	
Sevareid: On Cambodian dilemma facing Nixon.	02:45
Thursday, April 30, 1970	
Sevareid: On the new phase of the fighting in Indo-China, and Nixon's dilemma.	02:30

	Mins:Secs
Friday, May 1, 1970	
Sevareid: On the ramifications of move into Cambodia.	02:15
Monday, May 4, 1970	
Sevareid: On Kent State Univ., Student unrest, Cambodia.	02:35
Tuesday, May 5, 1970	
Sevareid: On America's crises—Cambodia, decline of presidency.	02:45
Wednesday, May 6, 1970	
Sevareid: On Nixon decisions on Indo-China.	02:40
Tuesday, May 12, 1970	
Sevareid: On issue of Cambodia and Washington's preoccupation with it.	02:45
Thursday, May 14, 1970	
Sevareid: On the new form and depth of antiwar movement.	02:30
Monday, May 25, 1970	
Sevareid: On our preoccupation with Far East making it difficult for us to pay attention to what's going on in Mideast.	02:30
Tuesday, May 26, 1970	
Sevareid: On confusion in Washington about timetable for withdrawal from Cambodia.	02:20
Wednesday, May 27, 1970	
Sevareid: On effects of Indochina War, and our entry into Cambodia.	02:36

PRESIDENT NIXON'S ADDRESSES NOVEMBER 1969 - JUNE 1970

Date	Title	Time
11/ 3/69	President Nixon's Address on Vietnam War Policy	9:30-10:02 P.M.
12/15/69	President Nixon's Address on Vietnam	6:00- 6:14 P.M.
1/22/70	President Nixon's State of the Union Message	12:30- 1:30 P.M.
4/20/70	President Nixon's Address to the Nation on Vietnam	9:00- 9:30 P.M.
4/30/70	President Nixon's Address to the Nation re Cambodia	9:00- 9:41 P.M.
6/ 3/70	President Nixon's Address on Cambodia	9:01- 9:16 P.M.

CBS News Analyses re President Nixon's Addresses:

Date	Title	Min.:Sec.
11/ 3/69	CBS NEWS SPECIAL REPORT: Analysis of President Nixon's Address on Vietnam War Policy	
	Dan Rather: Summarized Nixon's Speech	1:12
	Marvin Kalb: Commented that speech's content was not new and that the speech was aimed at the "great silent majority." Also noted Nixon's efforts toward a negotiated settlement.	1:24
	Eric Sevareid: Stated speech was a low-keyed call for support of Nixon's Vietnam policies. Also stated he felt something else would follow this speech, such as troop withdrawals.	2:28

Date	Title	Min.:Sec.
	Marvin Kalb: Again noting nothing new in speech.	1:00
	Correspondents agreed that Nixon is trying to keep Vietnam from becoming a humiliating loss.	1:00
12/15/69	CBS NEWS SPECIAL REPORT: Analysis of President Nixon's Address on Vietnam.	
	Bruce Morton commentary re President Nixon's Speech on Vietnam.	3:00
1/22/70	CBS NEWS SPECIAL REPORT: Analysis of President Nixon's State of the Union Address.	
	Roger Mudd: Summarized three main points of President's speech: inflation, crime, and environment and President's request for cooperation from democratically controlled Congress.	3:32
	Marvin Kalb: Commented on general foreign policy aspects of speech particularly Vietnam. No change in policy noted. Also summarized Nixon's new global approach fidelity to specific treaty commitments while cutting back in other countries.	2:00
	Eric Sevareid: Stated that speech denotes a new relationship between the United States and the world—this being a break from U.S. foreign policy of past 25 years. Other remarks on original purposes of a State of the Union Address.	2:48

Date	Title	Min.:Sec.
	Dan Rather: Speech and delivery excellent but also commented on Moynihan's noticeable influence. Commented that Nixon had been badly underestimated and that speech proves otherwise, especially where Nixon has taken away nearly all Democratic Party issues.	3:12
	Roger Mudd: Comments on Democratic Party reactions and attempt to steal issues from the President.	1:04
	Eric Sevareid: Summarized problems Nixon still has facing him: 1. Vietnam withdrawal policy. 2. Inflation. 3. Negroes—no specific mention in speech.	1:48
	Marvin Kalb: U.S. role in Nigeria Guam Doctrine vs. starvation.	1:16
	Brief summary of speech followed.	1:40
4/20/70	CBS NEWS SPECIAL REPORT: Analysis of President Nixon on Vietnam	
	Roger Mudd: Withdrawal of 150,000 troops a surprise—expected only 50,000.	1:20
	Dan Rather: Comments on military objections to such a massive withdrawal. Withdrawal figure was compromise but more in favor of Nixon's view than military.	0:44
	Roger Mudd: Question on Laos and Cambodia.	0:12
	Dan Rather: Comment on short notice of advanced copies of speech but states speech was never advertised as being on Indochina—solely Vietnam.	0:40

Date	Title	Min.:Sec.
	Eric Sevareid: Statements on Hanoi's reaction and fact that Nixon has enlarged area of warning to include Laos and Cambodia. Seemed to Sevareid Nixon was discussing Indochina.	1:28
	Roger Mudd: Question about effect of Paris Peace Talks on withdrawals.	0:12
	Dan Rather: Commented that troop withdrawals does not mean the stoppage of sending troops to Vietnam. Credibility gap mentioned —Rather said not entirely Nixon's fault but everyone's fault. That war involves killing must not be forgotten.	1:16
	Roger Mudd: Question that even though combat troops will be withdrawn we would still be there with other supplies.	0:12
	Richard Threlkeld: Comments on troop reductions and Vietnamization of the fighting. Stated that Vietnamization has shown how dependent Saigon is on U.S. military but has helped South Vietnam government extend its influence to the people.	3:36
	Closing statements that Nixon has taken some political fever out of Vietnam issue.	1:36
4/30/70	CBS NEWS SPECIAL REPORT: Analysis of President Nixon on Cambodia	
	Dan Rather: Summary of Nixon's speech.	2:32
	Marvin Kalb: Comments on diplomatic advisers losing to military advisers. Cambodian reaction to Nixon's move.	1:24

Date	Title	Min.:Sec.
	Dan Rather: Noted an advanced briefing given to press and advanced text available one hour and forty-five minutes.	0:48
	Steve Rowan: Comments on military aspects units involved and military beliefs of necessity of this action.	2:48
	Dan Rather: Statements on expected casualties.	1:00
	Charles Collingwood: Influence of speech on enemy, particularly at Paris talks.	1:08
	Marvin Kalb: Noted President also directed his speech to Congress, which will probably explode. Reference to Senator Aiken.	0:40
	Dan Rather: Nixon's move to be basically defensive but risk involved due to Communist China.	0:44
	Charles Collingwood: Stated neither Soviet Union or Communist China will go to war over this issue even though there will be loud gestures.	0:36
	Marvin Kalb: Agrees with Collingwood and voices hope that Nixon's plan will shorten war but that past efforts have failed.	1:00
	Charles Collingwood: Enemy is weaker now. Military aspects of war.	1:12
	Marvin Kalb: Whereas U.S. will not be humiliated it is unlikely North Vietnam will, in consideration of how long they have been engaged in battle.	0:24
	Dan Rather: Important to point out that Nixon does not see this as a Cambodian war but rather as a defensive maneuver to his policy of Vietnamization.	1:00

Date	Title	Min.:Sec.
	Charles Collingwood: Nixon has succeeded in splitting difference between Joint Chiefs and Defense Secretary.	0:32
	Dan Rather: Political consequences of speech. Comparison to Johnson on March 31, 1968.	0:28
	Charles Collingwood: Commented that Cambodia has always been a part of the war, at least for the enemy, and now it's going to be part for us. Political effects noted.	0:52
	Steve Rowan: Comments on Congressmen that will likely support Nixon.	0:20
	Dan Rather: Summary and Close.	0:56
6/ 3/70	CBS NEWS SPECIAL REPORT: Summary and Analysis of President Nixon's Speech.	
	Dan Rather: Summarized main points of Nixon's speech; concluded nothing new except troop withdrawal announcement.	1:48
	Eric Sevareid: Discussed Nixon's motives for interim report. Noted difficulty of critics to second guess Presidential statistics of captured enemy supplies. Was corrected by Rather over his statement that Nixon left out statistics on enemy casualties.	3:00
	Bert Quint: (from Asia) Assessed Cambodian opeartion as a success. Pointed out necessity of Cambodia's new government remaining strong to thwart enemy operations. Commented on morale boost given South Vietnamese army by successes.	2:00

ANALYSIS OF CBS NEWS SPECIALS AND CBS NEWS SPECIAL REPORTS COVERAGE OF INDOCHINA WAR AND DOMESTIC REACTION NOVEMBER 1969 - JUNE 1970

Date	Title	Min.:Sec.
12/23/69	A CONVERSATION WITH SECRETARY OF STATE WILLIAM ROGERS	
	Reporter: Eric Sevareid	
	Rogers: Will leave question of whether it was a mistake to go into Vietnam to historians. We are now doing our best to get out; less criticism abroad of our policy there. Rejects domino theory but considers effect of U.S. defeat would be far-reaching. Vietnam situation international aggression, not civil war.	8:30*
12/26/69	THE CORRESPONDENTS REPORT: END OF A DECADE	
	Sevareid: Vietnam worst overseas mistake for U.S. of all time; disastrous effect on domestic spirit, confidence, economy, politics.	1:00*
	Collingwood: But we are beginning to get out of Vietnam and if Vietnamization works, we can get out with clear conscience and turn to other things.	0:45*
	Sevareid: Nixon better at healing world problems than domestic; Vietnam plan gives him some "elbow room" at home by silencing critics; but methods of opposing dissent, including Vice President's demagogic speeches, very bad.	2:00*

* Broadcast covered other subjects. This was time devoted to Indochina War and Domestic Reaction.

Date	Title	Min.:Sec.
	Collingwood: Policy of getting out of Vietnam popular abroad and among servicemen; has not lowered confidence in U.S. keeping overseas commitments.	1:30*
2/ 6/70	LBJ: THE DECISION TO HALT THE BOMBING	
	Cronkite: Who played key notes in decision.	0:36
	Johnson: Disagreement among advisers. LBJ asks for a plan.	0:32
	Cronkite: History of bombing.	0:32
	Johnson: Announcement of stopping of bombing.	0:20
	Cronkite: When and how did LBJ make the decision.	0:28
	Johnson: Recalls trip to Australia, made plans to see Pope; discusses criticism of American people, Tonkin, Gulf Resolution and relations with Congress.	8:20
	Westmoreland: Vietnam encouraging and optimistic—we're making real progress.	0:20
	Cronkite: Describes Tet offensive.	0:36
	Johnson: Explains why progress report was accurate in light of later developments. Also explains psychology behind Americans' reactions to Tet. Conference with generals to decide to send in more troops. Reads portion of directive to Clifford that was misunderstood by members of his administration and the media.	10:32

Date	Title	Min.:Sec.
	Johnson: Discusses Clifford's statement about the impossibility of a military victory and his feelings on this.	1:16
	Johnson: Advisers' opinions on stopping bombing and his reaction.	2:04
	Johnson: Developments from Rusk's recommendation for a halt until the actual speech.	2:04
	Johnson: Reports on recommendation from unofficial advisers to halt bombing and their influence on him.	1:56
	Johnson: Reaction to Acheson's disenchantment with Joint Chiefs of Staff briefings.	0:44
	Johnson: Discussion of Rusk's intentions in stopping bombing.	0:56
	Dean Rusk: Partial succession of bombing will not bring peace.	0:24
	Johnson: Still felt it was worth a try.	0:32
	Johnson: Explains apparent discrepancy between two confusing statements made by Rusk.	1:16
	Johnson: Revealed his expectations for bombing halt.	2:00
	Cronkite: Effects of bombing halt.	0:32
5/ 3/70	WHERE WE STAND IN CAMBODIA	
	President Nixon: No invasion of Cambodia. Only purpose is to drive enemy out of his sanctuaries, then to withdraw.	0:20
	Hubert Humphrey: Cambodian action will lead to an expansion of the war and protest in U.S.	0:28

Date	Title	Min.:Sec.
	Collingwood: Attack on sanctuaries in Cambodia and resumption of bombing of North Vietnam. Americans surprised at this. Storm of debate has arisen.	1:20
	President Nixon: Action taken will speed up end of war and lessen casualties.	0:36
	Collingwood: CBS poll shows 59% approve of action taken but public is confused and frustrated.	2:16
	Threlkeld: Assesses impact of Cambodian operation—a gamble.	2:40
	Major General L. V. Roberts: Action of great significance and unsettling to the enemy.	0:24
	Threlkeld: Timetable of troop withdrawal is no longer certain. U.S. again is not controlling in Indochina.	0:56
	Collingwood: Description of Cambodia and plan of operation. Major re-escalation of war noted. Is it worth it?	2:36
	General Maxwell Taylor: Favors President's action. If it succeeds it will shorten the war. This is a war of the U.S. government and the U.S. people—not just the military. Some in the U.S. want to give up.	2:36
	Retired General James Gavin: We should not be in Cambodia. If we try to wipe out all sanctuaries we will ultimately be in China. Expresses concern about military winning the show. The question should not be whether we will be humiliated but whether we are doing the right thing.	3:12

Date	Title	Min.:Sec.
	Collingwood: Introduces Nixon's view.	0:28
	President Nixon: North Vietnam is attacking Cambodia. Cambodia has asked for help.	0:48
	Collingwood: Cambodians are ill-prepared to resist on their own any determined assault by battle-hardened North Vietnamese or Viet Cong troops. Introduces Bert Quint.	0:20
	Bert Quint: Cambodians are gentle people more concerned with the land and their families than with killing. Cambodian government is teaching them to hate all Vietnamese. War is all around the Cambodians and is getting closer.	2:24
	Collingwood: Cambodians felt relatively secure until Sihanouk was deposed. Introduces Bernard Kalb.	0:16
	Bernard Kalb: War came quickly to Cambodia after being just outside of it for years. Created new alliances.	0:20
	General Lon Nol: Nixon is concerned with our neutrality as well as U.S. interests.	0:16
	Bernard Kalb: Recount of events in Cambodia since March and comments from a Cambodian man. Drive to end cult of Sihanouk and to drive out the Vietnamese communists. No distinction made by the people between local Vietnamese and Vietnamese communists. Local Vietnamese are being driven out and some killed.	3:32
	Collingwood: Introduces report from Bert Quint.	0:24

Date	Title	Min.:Sec.
	Bert Quint: Cambodian troops know where communists are but don't have the supplies or strength to attack them.	1:16
	Cambodian Man: We need help from any country.	0:28
	Bert Quint: Comparison of Cambodian forces with Viet Cong by numbers, training, and equipment. The Communist forces are far superior.	3:16
	Collingwood: Review of criticism on U.S. of Nixon's action.	1:10
	President Nixon: Political considerations were rejected on making decision.	0:32
	Dan Rather: President Nixon will not accept defeat but wants to get out of Vietnam. Has relied on small circle of advisers.	1:32
	Senator Hugh Scott: No resumption of bombing.	0:16
	Senator Fred Harris: Shocked reaction to sending of troops into Cambodia and resuming of bombing.	0:36
	Senator John Stennis: U.S. must have a military victory in Cambodia and perhaps may later move further north.	0:36
	Senator George Aiken: Senate Foreign Relations Committee wasn't consulted.	0:32
	Senator William Fulbright: Senate hasn't been treated fairly.	0:32
	Senator Mark Hatfield: Something positive must be done to offer the U.S. people and Congress an alternative—an opportunity to veto this war or confirm it.	0:24

Date	Title	Min.:Sec.
	Collingwood: Explanation of Hatfield amendment. Introduction of interview of Rogers by Kalb.	0:44
	Secretary of State Rogers: Cambodian operation going well but still too early to tell. Resumption of bombing is not a policy change. Explains why it is not. Reiteration of plans in Cambodia along with withdrawal of troops. Stresses time limit on operation made. President is aware of feelings of Senate Foreign Relations Committee before he announced his decision. Felt he had mentioned this possible plan in his appearance before the Committee.	4:04
	Collingwood: Late developments in Cambodia.	0:28
	Threlkeld: Report on fighting in Cambodia.	2:12
	Collingwood: Summary of action in Cambodia and its implications.	2:28
5/ 9/70	THE COLLEGES, CAMBODIA AND THE CONFRONTATION IN WASHINGTON	
	President Nixon: Students want peace, the same as I do.	0:40
	Cronkite: Rally in Washington for peace today by students. Recap of Nixon's speech and reactions to it.	1:20
	Schoumacher: Demands of demonstrators.	0:44
	Student: Blood is the price paid for disagreeing with Nixon's war policies.	0:32
	Dr. Benjamin Spock: What can we do to end the war now?	0.28

Date	Title	Min.:Sec.
	Labor Spokesman: Apology for construction workers in NYC and for George Meany.	0:44
	David Dellinger: Drop all charges against the Panthers.	0:32
	Coretta King: In agreement with demonstrators.	0:16
	Schoumacher: Description of activities in Washington.	1:20
	Cronkite: Nixon's ways of establishing communication with youth.	1:12
	Dr. Heard: There is a national crisis.	1:16
	Dr. Moos: A majority of students and faculty members are demonstrating and striking because of Cambodia.	0:40
	Demonstrators in Washington:	
	Martin Golub: Words have become meaningless.	0:20
	Bob Wallace: Objectives of President and students are not the same.	0:16
	Brian O'Leary: Feels he must protest and lobby.	0:16
	Brenda Shiggley: Will work for peace candidate.	0:08
	Richard Leathem: Confront the Administration with radical positions.	0:12
	Richard Woods: Gives reasons for being in Washington.	0:24

Date	Title	Min.:Sec.
	Jacqueline Wallinsky: U.S. is not the best of all possible places but can do something.	0:20
	Harvard professors	
	Thomas Schelling: Cambodian action is sickening.	0:12
	Francis Bator: President didn't consult with enough people. Discussion with Kissinger was painful. Thinks President needs legislative constraints.	1:12
	Richard Neustadt: Why they came to see Kissinger.	0:36
	Cronkite: Explanation of Moffett and introduction of Allen.	0:24
	Dr. James Allen: Strike on campus is very serious and will spread. Wants to see war ended so can use resources for other problems. May be more resignations. Will work within Administration to bridge communication gap with youth. President is listening now and thinks there will be a change.	3:00
	Robert White: Students are concerned about Cambodia. Was ready for a reaction to speech by students.	0:32
	Professor Thomas Moore: Moral failure of political leadership to respond to students that caused alienation.	0:52
	Professor William Jameskopf: Students are socially conscious. Pressure will be reduced if the war is eliminated.	0:48

Date	Title	Min.:Sec.
	Professor Harris L. Dante: Government does not listen.	0:24
	Professor Rauk: Students not acting with mature responsible actions.	0:44
	Student Anthony Parisi: Sick of violence and confused.	0:44
	Girl Student: Now willing to fight. Wants to change things, non-violently.	0:28
	2nd Girl Student: Students upset, even ones who were formerly apathetic.	0:40
	3rd Girl Student: Students want to be heard. Shooting at Kent State has widened communication gap.	0:32
	4th Girl Student: A possible revolution. War must be stopped.	0:16
	Student (Cleveland State): School should be open.	0:16
	Faculty Member: This scenario must stop.	0:12
	President Enarson: Because of student plebiscite, university will stay open.	0:48
	Cronkite: Describes events concerning New York City construction workers, police and peace demonstrators.	0:52
	Reagan: Great majority of students and faculty believe there is a better way than violence. Announces closing of schools.	1:12
	President S.I. Hayakawa: Worried by wave of hysteria in country. Students' reactions are understandable but not those of professors and presidents. Professors against Nixon are middle-aged adolescents. The captain should run the ship.	1:48

Date	Title	Min.:Sec.
	Cronkite: Discusses alleged statement by Finch about Agnew.	0:52
	Finch: Did not refer to Vice President in discussing language of high officials with students. Government needs a mechanism for communication with youth. Students committed to political action. Discusses forthcoming meeting of President Nixon and Governors.	2:44
	Dan Rather: Physical description of Washington. Comparison of antiwar demonstrations and Nixon's reactions changes in Nixon's image from first year.	2:20
	Hickel: Discusses decision to write letter and what he meant in letter.	2:44
	Cronkite: Discussion of student and congressional activity and international reactions. Report on action in Indochina.	2:44
	Sevareid: Comments on demonstration, problems of President, student feelings, and emotions of Americans to the crisis.	3:24
5/10/70	CAMPUSES IN CRISIS: THREE COLLEGE PRESIDENTS SPEAK	
	Reasoner: Introduction of presidents.	0:32
	Fleming: Three university presidents are representative of types of universities. Share same problems with most college presidents.	0:36
	Hesburgh: Worst crisis on campus, that he has ever seen. There is a crisis outside the university and the university has pulled together to do something about it.	1:32

Date	Title	Min.:Sec.
	Brewster: Crisis in university and outside is a cumulation of frustration of not being able to change any of the ills of society. This crisis has drawn the university together.	1:44
	Fleming: Large percentage of students concerned about Cambodia.	0:48
	Hesburgh: Closing of schools may have been most educative days in lives of students.	2:20
	Fleming: Being on trisemester makes the closing situation different.	0:20
	Brewster: Many options open to students regarding grades because of the closing. Would resist keeping schools shut down. Establishment must give students another way of being heard rather than shutting down.	1:00
	Fleming: We must speak out so as not to alienate a whole generation. Explains students' reasons for striking and the effect it has had.	1:19
	Hesburgh: Americans have stereotypes of students. Majority of students are frustrated, and should be active in the political process. The university must also be active.	2:28
	Brewster: Students are seriously questioning the system. The system must give a means for expressing this frustration. Believes in institutional neutrality but the members of the institution should express their convictions.	2:28
	Fleming: Students feel alienated.	1:00

Date	Title	Min.:Sec.
	Hesburgh: U.S. priorities are wrong and students recognize this. Older people can learn from younger people. Be glad youth is not apathetic.	1:44
	Brewster: Problem of preventing a riot at Yale for Black Panther Rally discussed. Police did a superb job. Has not faced question of calling in civil authorities to quell a riot.	2:00
	Fleming: No rule as to when to call police or National Guard.	1:00
	Hesburgh: President Nixon should listen to the students and there should be a mechanism set up for this purpose.	1:44
	Brewster: Nixon should talk about national interest not merely victory or defeat and also make the political process available to youth.	0:44
	Fleming: The credibility gap of the President can be cleared by actions not words.	0:28

ANALYSIS OF CBS NEWS SPECIAL: "THE SENATE AND THE WAR" JUNE 5, 1970

Date	Title	Min.:Sec.
6/5/70	"The Senate and the War"	
	Announcer: Introduction of participants.	1:20
	Sevareid: Background information on war.	1:16
	Dole: Satisfied with President's report.	0:16
	McGovern: Still thinks Cambodian action a mistake.	0:20
	Stennis: Satisfied with President's report.	0:16
	Cooper: Good report on a military operation.	0:16
	Gurney: Good report.	0:12
	Hughes: Successful militarily but not politically.	0:36
	Dole: Report showed potential of ARVN forces and a willingness to compromise with the Senate.	1:12
	Cooper: Interpretation of Cooper-Church Amendment.	0:52
	Stennis: Negative aspects of the amendment. Clarification of Byrd Amendment.	1:04
	Cooper: Byrd Amendment nullifies Cooper-Church.	1:20
	McGovern: Some Senators are trying to restore the power to the Congress that the Constitution intended. Discussion of this aspect.	2:00
	Gurney: Explains relationship of Presidential powers and war. Comments on Cambodian action.	1:52

Date	Title	Min.:Sec.
	Stennis: Discusses sovereignity of Cambodia. Senate should not try to limit battle field action.	1:28
	Cooper: Explanation of how amendment would not restrict President's power to protect troops, but the President should come to Congress if he is going to engage U.S. in war there.	1:08
	Dole: President should be able to take immediate action to protect troops. Therefore, there is no harm in the Byrd Amendment.	0:45
	Cooper: Supports the President in his Vietnamization program but doesn't want to expand the war.	0:52
	McGovern: It is a violation of the Constitution if the President can freely commit American ground forces. Explains objective of Cooper-Church Amendment.	1:32
	Gurney: Discusses President's new policy in Southeast Asia. Enumerates Nixon's efforts to achieve peace.	1:08
	Hughes: Byrd Amendment renders Cooper-Church Amendment useless. Cambodia is an extension of the war. Vietnamization will not end the war. Supports troop withdrawals but is aware of political connotations. The Congress doesn't have as extensive use of the media as the President does. War should be brought to a scheduled end.	3:32
	Dole: Hopes Republicans win the Senate. Everyone wants the war ended. Praises Nixon and asks for support.	1:24
	Stennis: Discusses both amendments and battle field.	1:40

Date	Title	Min.:Sec.
	Cooper: Explains amendment again. Believes President will have troops out by June 30. Amendment based not on mistrust of President but on trust in Congress.	2:28
	McGovern: Cambodian action has been a military success, but we have doubled the area we have to pacify if the South Vietnamese troops don't come out; that will slow down efforts to pacify Vietnam.	1:20
	Gurney: Doesn't double the area of the war as McGovern said. In the past, the U.S. has made the broad decisions of the war not the Vietnamese. Gives examples of this.	1:40
	Hughes: Nixon now pledges to end the war rather than win the peace. Vietnamization is an extension of fighting. War will only be ended by political settlement. Congress should reassert its Constitutional rights.	3:08
	Stennis: The President is not after military victory. Debate in Congress over the war should have been held in 1954, '55, '56.	1:40
	Gurney: Vietnamization is working.	1:32
	Dole: President and other Senators support general intent of Cooper-Church Amendment but it must have a provision in it so as not to impair the right to protect American troops.	1:28
	McGovern: Survival of our Constitutional and political system is at stake, if we continue in the war. Congress must face up to its responsibilities.	1:44

Date	Title	Min.:Sec.
	Dole: Explains change in Cambodian situation from April 20 to April 30. All want peace.	0:56
	Stennis: American people do want to get out of Vietnam, but want the President to have the authority to protect troops.	1:12
	Gurney: Polarization is out of perspective. Before Cambodia, people were pleased with the President and the majority still support him.	1:28
	Hughes: Moral fiber of people in the country has been rented over the war. U.S. has resources to cope with problems once the war is over. Must unite the country again. All want war ended but are divided on means. Elections should reflect will of people.	2:00
	Dole: Kansas is not being torn apart by the war. We are in Cambodia to protect American troops.	0:24
	Cooper: Approves of Guam Doctrine and explains effect of Cooper-Church Amendment on the doctrine.	1:28
	Gurney: Military budget has been cut and amounts spent on other problems are increasing.	1:52
	Stennis: Restricting the President might wreck the progress made so far.	0:24
	Hughes: U.S. is still increasing involvement in the war.	0:24
	McGovern: Still not near a settlement of the war.	0:16
	Sevareid: This war has been widely disputed. Argument is not ended, nor has the war.	0:40

ANALYSIS OF CBS REPORTS COVERAGE OF INDOCHINA WAR AND DOMESTIC REACTION NOVEMBER 1969 - MAY 1970

Date	Title	Min.:Sec.
12/2/69	A TIMETABLE FOR VIETNAM	
	President Nixon: By December 15, 60,000 men will have been withdrawn. Eventual withdrawal of all forces on a timetable.	0:44
	President Thieu: In 1970, South Vietnamese will replace most of U.S. fighting troops. Can't say when nor number for replacement.	0:20
	Vice President Ky: In 1970, 150,000 U.S. troops can be withdrawn.	0:16
	Colonel Mayer: Major part of South Vietnamese armed forces will be trained by end of 1970, except for mechanics and pilots.	0:16
	Major Hung: Two to Three years before Vietnamese Air Force has trained fighter pilots.	0:12
	General Young: Fighter pilots completely trained by mid-1972.	0:08
	Colonel Hayes: In three years South Vietnamese Army could be one of most effective in Southeast Asia.	0:12
	U.S. Secretary of State Rogers: Reversal of policy troops are being withdrawn, Vietnamizing the war.	0:28

Date	Title	Min.:Sec.
	Collingwood: A timetable does exist. CBS poll shows Americans want withdrawal. 79% believe it will take two years or more to withdraw. Saw impressive signs of progress in Vietnam this past time—Saigon alive at night; bombed buildings rebuilt; refugees returned to villages; countryside open to travel; roads open.	5:24
	Major Denis Finley: "Highway 30" closed for seven years; opened about September therefore, people able to come home.	0:40
	Lieutenant Tony McLean: Opening of "Highway 30" brought people back. South Vietnamese unit can keep road open.	0:44
	Richard Roberts, district adviser: Primary allegiance of people is to the land. Some allegiance for South Vietnam government, but more will come later.	1:04
	Collingwood: Villagers, by accepting weapons from government of South Vietnam, is a kind of political allegiance. South Vietnam increasing its strength in Mekong Delta, a former Viet Cong area. No U.S. foot soldiers in Delta ARVN has taken over.	5:04
	1st Lieutenant Donald Borgo: ARVN has improved 100%, but weak small unit leadership.	0:32
	General Hoang: Militarily, South Vietnam can hold its own.	0:20

Date	Title	Min.:Sec.
	Colonel John Hayes: South Vietnamese soldiers are different from U.S. soldiers but are capable in their own way. M-16 rifles have also helped South Vietnamese soldiers. In three years the ARVN will be one of the most effective armies in Southeast Asia.	2:16
	Collingwood: Official line: Vietnamese can do the job. ARVN rated at 90% of its goal of expansion and modernization. Air Force is only at 50% of its projected strength. Inter-dependence between Vietnamese and U.S. in the Delta air war.	2:28
	Major Hung: Vietnamese pilots are trained in U.S. In two to three years Vietnamese Air Force can carry on war without U.S. help.	0:32
	Collingwood: Major Hung's squadron is self-sufficient. No U.S. help; only U.S. planes.	1:20
	General Young: Vietnamese Air Force has good, professional pilots.	0:32
	Collingwood: VNAF is best of Vietnamese Armed Forces but doesn't have enough people. Takes two years to train an aircraft mechanic. Bien Hoa airbase shows progress and problems. Mechanics must be taught English first.	2:25
	Colonel Edward Mayer: Need more English teachers but are well trained and well equipped.	0:52
	Collingwood: U.S. has given equipment. Now must teach maintenance. If U.S. leaves "by plane and boat", South Vietnam would collapse. Probable timetable given. Does not guarantee survival of Saigon government, but gives it a chance to survive. Must broaden governmental support.	3:20

Date	Title	Min.:Sec.
	Colonel Nguyen Be: Hamlet training program is a step toward democracy. By more training, people will identify with Saigon government.	0:24
	Collingwood: Identification of people with Saigon government is the key to survival. President Thieu realizes that winning people is as important as winning battles. Visits a village and acts as a politician.	4:25
	President Thieu: Government will help but the people will do everything themselves.	0:28
	Collingwood: Neither Thieu nor the NLF have a wide base of public support.	1:20
	President Thieu: Have made progress and is pleased with it. Will take more responsibility. U.S. people should give Nixon time to Vietnamize the war. U.S. involvement in Vietnam will have been good or bad depending on how the U.S. leaves.	1:32
	Collingwood: Aim of U.S. has been to let South Vietnam determine its own future. Slow timetable might allow this. Both U.S. and South Vietnam agree it is now time for U.S. to leave. There is a fighting chance the timetable can work. South Vietnamese will now have to do most of the fighting.	2:04
	President Kennedy: South Vietnam government must win popular support for the war if it is to be won. It is their war and only they can win it or lose it.	0:28

ANALYSIS OF WHO, WHAT, WHEN, WHERE, WHY COVERAGE OF INDOCHINA WAR AND DOMESTIC REACTION NOVEMBER 1969 - MAY 1970

Date	Title	Min.:Sec.
3/10/70	LAOS: AMERICA'S NOT-SO-SECRET WAR IN ASIA	
	Collingwood: Situation in Laos.	0:32
	Secretary of State Rogers: President's position in Laos.	0:24
	Senator Stuart Symington: Undisclosed war in Laos is very dangerous.	0:24
	Collingwood: Story of American involvement in Laos.	0:56
	President Nixon: No American's in Laos on combat basis.	0:28
	Collingwood: Alteration of President's previous statement and implications of situation in Laos.	2:04
	President Kennedy: Laos must remain neutral.	0:28
	Collingwood: History of Laos and U.S. involvement there.	2:36
	Bernard Kalb: Situation in Laos now.	1:04
	Fred Branfman: Refugee situation in Laos.	1:08
	Ambassador Godley: No commitment in Laos but military assistance and material is being supplied.	0:28

Date	Title	Min.:Sec.
	Timothy Allman: Report on Long Chen, a CIA-supported base for guerrilla operations and other bases.	1:24
	Bernard Kalb: Description of U.S. involvement, Laotians and Vientiane. Discussion of implications.	2:52
	Collingwood: Introduce Souvanna Phouma.	0:32
	Prince Souvanna Phouma: Laos has asked and used American support. Duty of U.S. to protect Laos from being overrun.	1:08
	Senator Symington: Need our money for problems at home not in Laos.	0:20
	Senator Fulbright: Afraid of deeper involvement.	0:16
	Senator Scott: Need air commitments to Laos to protect U.S. troops in Vietnam.	0:40
	Senator McGovern: Not all right to start in Laos as we did in Vietnam.	0:32
	Senator Cooper: Should get out of Laos. The risk is too great.	0:24
	Collingwood: Wrap-up of situation in Laos and its implications.	1:40

ANALYSIS OF 60 MINUTES COVERAGE OF INDOCHINA WAR AND DOMESTIC REACTION NOVEMBER 1969 - MAY 1970

Date	Title	Min.:Sec.
1/ 6/70	Reasoner: Combat art and poetry.	6:15
5/12/70	Wallace: Interview with Walter Hickel and family about Hickel letter to the President.	20:30
	Wallace: During interview with John Mitchell, Mitchell plays down influence over decision to go into Cambodia.	1:00
5/26/70	Wallace: Discussion between Attorney Frank McGee and author Seymour Hersh on publicity versus fair trial for those accused in My Lai incident.	12:18

ANALYSIS OF FACE THE NATION COVERAGE OF INDOCHINA WAR AND DOMESTIC REACTION NOVEMBER 1969 - MAY 1970

Date	PARTICIPANTS	Min.:Sec.
11/ 2/69	Guest: Senator Russell Long Reporters: George Herman, Marya McLaughlin Walter Mears (Associated Press)	3:20

No comment on President's forthcoming speech on Vietnam. If we can't fight to win we should get out, either in a hurry or in phased-out operation. Admires Vice President and agrees with substance if not language of his criticism of war dissenters; men in field deserve a strong U.S. position at negotiating table.

11/ 9/69	Guest: Senator John Stennis Reporters: George Herman, Steve Rowan Peter Lisagor (*Chicago Daily News*)	4:40

Doubtful about Vietnamization program but willing to give it a try. Doubts combat troops can be out by end of 1970; air support would still be needed. Moratorium marches can be hindrance to speedy withdrawal by publicizing division over war.

Date	PARTICIPANTS	Min.:Sec.
11/16/69	Guest: Herbert Klein Reporters: George Herman, Robert Pierpoint Richard Harwood (*Washington Post*)	15.00

Value of Washington demonstrations lies in showing we are a country where dissent can be expressed; government policy cannot be made on streets. "Silent Americans" should speak out, so Hanoi isn't deluded about public opinion. Government obviously did not oppose dissenters but cooperated with them. Greater show of unity could bring peace quicker. Polls indicate support of President. Moratorium leaders did good job of policing demonstrators; but there are dangers from numbers of people in emotional atmosphere. (Rest of broadcast on Vice President Agnew's speech.)

11/30/69	Guest: Senator George McGovern Reporters: George Herman, Bruce Morton Nick Kotz (*Des Moines Register & Tribune*)	13:00

My Lai incident has shown true face of war. Lt. Calley could be used as symbol of collective national guilt; bombing villages as bad as close-range murder. Should disengage completely in a year. Plans resolution to set up committee to study all causes and procedures in getting into Vietnam; Symington committee studying involvement in Laos and Thailand. Fears emphasis on silence; debate needed. Large marches self-defeating in repeti-

Date	PARTICIPANTS	Min.:Sec.
	tion; local political action needed; but sees no national third party growing out of peace movement.	
12/14/69	Guest: Dr. Milton Eisenhower Reporters: George Herman, Hal Walker Richard L. Strout (*Christian Science Monitor*)	
	My Lai incident does not necessarily indicate inherent violence in American character; brutalizing effects of war.	2:00
	Reaction to Moratorium Day march depends on where you were: looked violent inside Justice Dept.; from perspective of Baltimore majority seem peaceful.	1:40
	Nixon's statement about watching football during mobilization probably misconstrued; merely meant White House knew facts of public reaction and march would not provide additional evidence.	1:12
1/ 4/70	Guest: Senator Fred Harris, Chairman Democratic National Committee Reporters: George Herman, David Schoumacher Paul Hope (*Washington Star*)	4:12
	Doubt that Vietnamization program can work; prefers to call it "de-Americanization." Vietnam war definitely an issue but a party one; looking forward to Fulbright hearings. Favors more rapid troop withdrawal as advocated by Clark Clifford.	

Date	PARTICIPANTS	Min.:Sec.
1/11/70	Guest: Secretary of Defense Melvin Laird Reporters: George Herman, Steve Rowan Charles W. Corddry (*Baltimore Sun*)	
	Discussion of figures on troop reduction leading to possible volunteer force in Vietnam in 1971.	1:40
	Manpower cuts depend on rate of Vietnamization; General Abrams to make decision. Forthcoming trip to Vietnam: survey of South Korean forces; possibility of My Lai-type atrocities involving Koreans.	5:30
2/ 1/70	Guest: Vice President Spiro Agnew Reporters: George Herman, Bruce Morton Hugh Sidey (*TIME Magazine*)	4:40
	Denies statements on Asian trip shifted emphasis of Nixon Doctrine away from self-reliance; situation in Thailand conforms to Doctrine. Troop withdrawal will proceed as fast as capability of ARVN permits; small North Vietnam victories should not be blown up out of proportion by media.	
2/ 8/70	Guest: Senator Charles Goodell Reporters: George Herman, David Schoumacher Walter Mears (Associated Press)	8:00
	Bill to cut off funds for war would publicize determination to get out of Vietnam; Javits opposed. War a mistake; we should withdraw	

Date	PARTICIPANTS	Min.:Sec.

all military personnel. President's Vietnamization plan open to "veto" by North Vietnam and Thieu government. Approves Nixon Doctrine for Southeast Asia. President could be defeated on war issue.

3/ 1/70 Guest: Charles Mathias Jr., Maryland 13:20
Reporters: George Herman, David Schoumacher
Philip Potter (*Baltimore Sun*)

President probably sympathetic to Mathias-sponsored resolution to repeal Gulf of Tonkin and other resolutions on Presidential powers for war and approving Vietnam withdrawal policy. War in Laos not so secret; aftermath of Geneva Accords. Possibility of triggering massive North Vietnamese invasion of Laos, and position of Thais. Congress getting more information on situation from reporters than from the government.

3/ 8/70 Guest: Senator Mike Mansfield 23:00
Reporters: George Herman, Marvin Kalb
Peter Lisagor (*Chicago Daily News*)

Not satisfied with President's statement on Laos; Plain des Jarres a separate operation; in favor of getting out of Laos entirely; involvement could slow down troop withdrawal from Vietnam. Vietnam solution must eventually include all of Southeast Asia.

Date	PARTICIPANTS	Min.:Sec.
3/15/70	Guest: Senator Stuart Symington Reporters: George Herman, Marvin Kalb Marquis Childs (*St. Louis Post-Dispatch*)	13:00

Definitely in a war in Laos; Asian war is diverting money needed at home and elsewhere; Middle East more important to our security than Asia; believes in negotiation rather than Vietnamization. "Shoddy" and classified story about money paid to Philippine government for troops to fight in Vietnam.

4/26/70	Guest: Senator Robert Griffin Reporters: George Herman, David Schoumacher Richard Stewart (*Boston Globe*)	14:30

Would back President on limited military assistance to Cambodia; opposes Goodell amendment tying President's hands; Cooper amendment provides flexibility. "Wouldn't be surprised" if there were new chief negotiator appointed to Paris.

5/ 3/70	Guest: Vice President Spiro Agnew Reporters: George Herman, Bruce Morton Peter Lisagor (*Chicago Daily News*)	23:00

Bombing of North Vietnam "protective reaction." Necessity for going after Cambodian sanctuaries now to safeguard American troops in South Vietnam. Same argument doesn't apply to North Vietnam because DMZ is short-

Date	PARTICIPANTS	Min.:Sec.
	er line at greater distance from Saigon and capable of defense by South Vietnamese forces. Members of Congress were informed of President's decision. U.S. not under any obligation to defend Cambodian government. North Vietnamese capability greatly diminished.	
5/10/70	Guest: Anthony J. Moffett and Charles Palmer Reporters: George Herman, David Schoumacher Haynes B. Johnson (*Washington Post*)	18:00
	Palmer: Demonstration showed public opposition to invasion of Cambodia. Young people beginning to find such demonstrations boring; will probably turn to political action. Nonviolent tactics certainly preferable. Only one person who refused to sign statement calling for impeachment of Nixon after Cambodia. Movement does include blacks. Congress evaded responsibilities in Cambodian situation. Education leaders would not have taken strong stands without impetus from student strikes.	
	Moffett: Hopes resignation will help improve communication between Administration and young. Believes President has stopped direct Administration attacks on young; young people have felt there was a policy of repression. Young people feel lack of good leaders; they need help and courage from their leaders, which Nixon has failed to give them. Public has responsibility, should not leave everything up to educators and Congressmen. Young people have made a start, raised issues.	11:30

Date	PARTICIPANTS	Min.:Sec.
5/17/70	Guest: Senator Mike Mansfield Reporters: George Herman, John Hart Warren Weaver (*New York Times*)	
	Senate amendment concerning troops in Cambodia is measure to support President, not show distrust, to ensure he does what he says he'll do. House should also act; Senate must and will take action on repealing Gulf of Tonkin, debating constitutional powers of Commander-in-Chief, on defense bill. Troops should be out of Cambodia by June 30 and let South Vietnamese take over all future action. Even if successful, Cambodia venture was failure in extending war, going into neutral country. U.S. should not act if Cambodia goes communist; problem for South Vietnamese and Thais.	14:00
	Cambodian move will not bring Hanoi to peace table. Young people ought to work in politics to reinvigorate system.	4:00
	Disagrees with President over world peacekeeping role for U.S. Southeast Asia not vital to U.S. security. Troops should be out by end of year.	3:30
5/24/70	Guest: Herbert Klein Reporters: George Herman, Dan Rather Philip Potter (*Baltimore Sun*)	12:00
	"Very significant" numbers of troops will be withdrawn from Vietnam by end of year. Vice President Ky a man who speaks his own	

Date	PARTICIPANTS	Min.:Sec.

mind "Wouldn't rule out" possibility of air support for South Vietnamese operations in Cambodia. Administration making efforts to approach youth on campuses; commission to be appointed to study Kent State tragedy; Hickel not necessarily a member.

5/31/70 Guest: Robert W. Haack 2:30
Reporters: George Herman, Mike Stanley

Eilene Shanahan (*New York Times*) Cambodia and Vietnam both factors in Stock Market performance. Business leaders at White House meeting reassured on troop withdrawal schedule.

WCBS-TV EXHIBIT

WCBS-TV SIX O'CLOCK REPORT
MARCH, APRIL, MAY 1970

	Mins:Secs
Monday, March 2, 1970	
Jensen: Mike Mansfield says situation in Laos is worsening. Big bombing in Mekong Delta. N. Vietnamese blew up bridge across National Highway 1.	00:30
Tuesday, March 3, 1970	
Jensen: Troop withdrawal from Vietnam (70,000). Defense Secretary Laird denial; Senator McGovern charges subterfuge.	00:30
Kalb: Vietnam peace talks might be stopped. (Material furnished by CBS News.)	01:30
Wednesday, March 4, 1970	
Jensen: Pre-trial hearings for five Marines charged with murder of 16 Vietnamese. Mendel Rivers contends U.S. is deepening military involvement in Laos. Fullbright "scared to death" Laos more important to U.S. than Vietnam. Secretary Rogers testified before Senate Committee.	00:30
Kalb: Congress and Press put pressure on Nixon administration for facts on Laos. (Material furnished by CBS News.)	01:30
Thursday, March 5, 1970	
Jensen: Combat deaths in Vietnam were 113, highest figure in three months. Americans wounded lowest in two years.	00:30

Mins:Secs

Thursday, March 5, 1970 (Continued)

Threlkeld: National Assemblyman Tran Ngoc Chau was convicted for ten years at his second military trial. 03:10
(Material furnished by CBS News.)

Jensen: Senator McGovern made appeal for facts about Laos. 00:20

Friday, March 6, 1970

Jensen: Nixon made a "precise description" of level of U.S. involvement in Laos. 00:40

Jensen: Casualties. 00:20

McLaughlin: Prince Souvanna Phouma asks U.S. for better weapons. Effects of bombing on Laos. 02:30
(Material furnished by CBS News.)

Monday, March 9, 1970

Jensen: Enemy mortar misses most of its target. Laos responds to cease-fire proposals. 00:40

Jensen: Army formally charges sergeants with larceny at Long Binh. 00:20

Tuesday, March 10, 1970

Jensen: Captain Medina charged with four counts of murder for My Lai massacre. 00:40

Jensen: Pentagon reveals U.S. troops in Laos got combat pay since 1966. 00:20

Jensen: Laotians wait for peace proposal. 01:40

Wilson: Senator Javits discusses whether facts on Laos are being kept from American public.

Wednesday, March 11, 1970	Mins:Secs
Jensen: 20,000 students rioted in Phnom Penh, Cambodia.	00:25
Jensen: Souvanna Phouma welcomed by Pathet Lao for cease fire and negotiations.	00:20
Wilson: Senator Case wants no more involvement in Asia. (WCBS-TV Film Report)	00:30
Barker: Widow of Captain says husband died in Laos. (KRLO-TV News film furnished by CBS News.)	01:10
Jensen: Low American losses in Vietnam; stumble on Communist supply bases.	00:20
Thursday, March 12, 1970	
Jensen: Laos discussed at Paris peace talks.	00:20
McLaughlin: Pathet Lao troops move within striking distance of Royal Laotian capital. (Material furnished by CBS News.)	02:58
Jensen: Number of wounded in Vietnam high.	00:20
Sargent: Big outbreak of fighting in Vietnam "Operation Phoenix". (Material furnished by CBS News.)	01:00
Friday, March 13, 1970	
Jensen: Sihanouk in Moscow. Cambodia asks Hanoi, Viet Cong and USSR withdrawal.	00:30
Jensen: 16 helicopters lost in Vietnam; 10 Americans killed.	00:20

	Mins:Secs
Friday, March 13, 1970 (Continued)	
McLaughlin: U.S. destroys USSR-built helicopter in Laos. (Material furnished by CBS News.)	02:15
Jensen: Senator Fullbright discusses Laos with newsman.	00:59
Saturday, March 14, 1970	
Jensen: 3 bombs explode in Saigon.	00:20
Monday, March 16, 1970	
Jensen: Two American seamen granted asylum in Cambodia.	00:30
Jensen: Secretary Rogers in private testimony on Laos. 50 Americans killed in Laos.	00:30
Tuesday, March 17, 1970	
Jensen: Charges against 14 officers for My Lai massacre.	00:40
Osborne: First Lieutenant Louis Font seeks discharge from Army—conscientious objector to Vietnam war. (WCBS-TV Film report.)	02:00
Jensen: Scattered fighting in Vietnam. N. Vietnamese seize two hilltop positions.	00:30
Jensen: Mansfield speaks against troops in Laos. (Material furnished by CBS News.)	02:00
Jensen: N. Vietnamese refuse to withdraw troops from Cambodia. Sihanouk in Moscow.	00:20
Wednesday, March 18, 1970	
Jensen: Prince Sihanouk ousted.	01:15
Kalb: In Laos, U.S. base overrun by Communists.	03:05

Wednesday, March 18, 1970 (Continued)	Mins:Secs
Jensen: Knowlton appointed to West Point Command. (Material furnished by CBS News.)	02:00
Thursday, March 19, 1970	
Jensen: U.S. recognizes new Cambodian regime.	00:45
In Paris, U.S. accused of engineering coup.	00:30
Laos situation confused.	00:45
Laird says U.S. should continue Laos bombings; may announce more troop withdrawals in April.	01:00
Vietnam casualty rates up, General Ramsey wounded.	01:00
Beebe: 200 arrested for blocking draft board door. (WCBS-TV film report.)	00:30
Syracuse demonstrators seek arrest. (WCBS-TV film report.)	01:00
Demonstration in several cities.	00:30
Friday, March 20, 1970	
Jensen: New Cambodian government proclaims martial law.	00:20
Sargent: North Vietnamese attack Laos. (Material furnished by CBS News.)	01:50
Jensen: 10 killed, 31 wounded in Vietnam.	00:20
Saturday, March 21, 1970	
Jensen: Sihanouk warned against returning to Cambodia.	00:20

Mins:Secs

Monday, March 23, 1970

Jensen: In Southeast Asia, Cambodia's new government is tightening its grip after deposing Prince Sihanouk. 00:20

Jensen: General Knowlton becomes Superintendent of the U.S. Military Academy after Major General Koster was charged in connection with My Lai massacre. (WCBS-TV film report.) 02:10

Tuesday, March 24, 1970

Jensen: Former Army Sergeant West testified before a Senate Subcommittee on any possible relationship between marijuana use and the My Lai massacre. 00:40

Jensen: Ousted Prince Sihanouk has urged his supporters in Cambodia to wage guerilla warfare against the rightest government. 00:30

Threlkeld: American troops in Tay Ninh Province in South Vietnam ordered to avoid border incidents involving Cambodia. (Material furnished by CBS News.) 02:45

Jensen: In Laos, Communist forces have asked Prince Souvanna Phouma to call an unconditional halt to American bombing. 00:20

Wednesday, March 25, 1970

Jensen: Ground fighting in Vietnam is scattered; 2 Marine Cobra gunships collided. 00:30

Jensen: Long Binh court martial of Lt. James Duffy. Pentagon denies troops at My Lai under influence of marijuana. 00:25

	Mins:Secs
Thursday, March 26, 1970	
Jensen: American jets crossed the Cambodian border to bomb North Vietnamese and Viet Cong troops. Casualties.	00:20
McLaughlin: Vietiane undisturbed by fighting. (Material furnished by CBS News.)	01:50
Friday, March 27, 1970	
Jensen: Cambodia's capital of Phom Penh is surrounded by tanks and troops. Hanoi backs a return of Sihanouk to power.	01:00
Saturday, March 28, 1970	
Jensen: White House says U.S. military commanders in South Vietnam sometimes move troops across the border in Cambodia in response to enemy attacks.	00:25
Monday, March 30, 1970	
Jensen: Civil war may be developing in Cambodia.	00:30
McLaughlin: North Vietnamese troops in Laos tried to take a hilltop position overlooking the Laotian and CIA headquarters in Long Cheng. (Material furnished by CBS News.)	02:00
Jensen: South Vietnamese Rangers and armored units have been pulled out of positions along the Cambodian border.	00:40

Mins:Secs

Tuesday, March 31, 1970

Jensen: U.S. command in Saigon disclosed that a Navy jet shot down a Russian-built MIG 21 over North Vietnam. Court martial of Lt. Duffy sentenced him to 6 months of confinement. Viet Cong and some North Vietnamese support Sihanouk's return to power in Cambodia. 00:40

Jensen: Nixon will have announcements on troop withdrawals from Vietnam. 00:15

Wednesday, April 1, 1970

Jensen: S. Vietnam heaviest attack in seven months. General William Bond casualty. 00:30

Jensen: Senator McGovern asks for immediate withdrawal. 01:04
(Material furnished by CBS News.)

Jensen: Cambodia new government complaint on N. Vietnam troops crossing border. 00:30

Jensen: Captain Medina charged. 00:30

Thursday, April 2, 1970

Jensen: Twelve Weathermen indicted in Chicago. 00:40

Jensen: Vietnam war, the constitutionality of—challenged by Governor Sargent (Mass.). 00:30

Jensen: March for Victory Committee, Carl MacIntire—principal organizer—anti-war march Vietnam. 01:30
(Material furnished by CBS News.)

Jensen: Vietnam—two-day wave of heavy enemy mortar. 00:30

Thursday, April 2, 1970 (Continued) Mins:Secs

Jensen: Secretary of State Rogers states to Senate Foreign Relations Committee that Nixon administration has no intention of getting involved in Cambodia. 00:30

Quint: Cambodia—hundreds of political prisoners released. 02:00
(Material furnished by CBS News.)

Friday, April 3, 1970

Jensen: Vietnam—American Infantry fighting Northwest of Saigon. American patrol collided with North Vietnamese. 00:10

Saturday, April 4, 1970

Jensen: Vietnam—North Vietnamese troops in Laos have attacked a former U.S. air strip and supply base at Sam Thong. In Vietiane, Premier Prince Souvanna Phouma met with Neutralist and Rightest leaders. In Cambodia, government closed universities to give military training to students. 00:40

Monday, April 6, 1970

Jensen: Vietnamese troops (3,000) rushed to relieve Americans at Dak Seang. 00:30

Jensen: China's Premier Chou En Lai charged U.S. engineered recent overthrow of Cambodia's Neutralist Prince Sihanouk. 00:30

Shepard: Sihanouk's successors are moving quickly to strengthen their position. 01:26
(Material furnished by CBS News.)

Mins:Secs

Tuesday, April 7, 1970

Jensen: North Vietnamese troops continue to apply heavy pressure to Green Beret camp at Dak Seang. Cambodia reports it used Russian-built MIGS to help battle Viet Cong forces. 00:40

Quint: Cambodia's new leaders are mobilizing and arming their forces. 01:37
(Material furnished by CBS News.)

Wednesday, April 8, 1970

Jensen: Vietnam—seige of Dak Seang past the crucial period. The Columbia Eagle was released today by Cambodia. 00:40

Thursday, April 9, 1970

Jensen: Vietnam—Nixon will make a nationwide report to update U.S. policy in Vietnam. In Vietnam enemy gunners shot down a U.S. medical evacuation helicopter at Dak Seang. Last week 138 Americans lives lost. 00:45

Jensen: In Paris today Philip Habib warned Viet Cong they are jeopardizing peaceful settlement. In Cambodia Vietnamese Communists pushing west. 00:30

Quint: Reports on transition in Cambodia from Phnom Penh. 02:17
(Material furnished by CBS News.)

Friday, April 10, 1970

Jensen: Army ordered hearings against Captain Medina re My Lai massacre. 00:25

Jensen: In Vietnam, the ten-day seige broken at Dak Seang. 00:25

Friday, April 10, 1970 (Continued) Mins:Secs

Jensen: Texas billionaire H. Ross Perot continues pressure on Hanoi to alleviate American P.O.W.'s. 01:40
(Material furnished by CBS News.)

Jensen: More than 1,000 South Vietnamese troops fought inside Cambodia in the Parrot's Beak area. More than 70 men, women, and children reportedly massacred by Cambodian troops. 01:40
(Material furnished by CBS News.)

Saturday, April 11, 1970

Jensen: In Vietnam, pre-dawn flight of B-52's unloaded 540 tons of bombs near Dak Seang. 00:45

Monday, April 13, 1970

Jensen: Downtown Saigon came under rocket attack for the first time nearly four months today. 00:30

Jensen: Last week in Vietnam a company of air cavalrymen were ordered into a jungle near Tay Winh to block escape of a North Viet force. The men balked but an officer praised them. 02:40
(Material furnished by CBS News.)

Jensen: President Nixon talked with Pentagon top brass over Viet Nam report he will deliver to nation Thursday. 00:40

Jensen: Cambodia army rushing reinforcements to Svay Rieng. 00:20

Quint: More than half million Vietnamese live inside borders of Cambodia. 01:20
(Material furnished by CBS News.)

	Mins:Secs
Tuesday, April 14, 1970	
Jensen: Cambodia's Premier Lon Nol today appealed for outside help.	00:30
Jensen: In Vietnam Dak Seang continues under siege.	00:31
Jensen: Captain Ernest Medina questioned for two hours re massacre at My Lai.	00:15
Jensen: Citizens Commission on U.S. war crimes in Vietnam talked of "electrical torture procedures". (WCBS-TV film report.)	02:01
Jensen: Seaman Priest courtmartial opens.	00:20
Wednesday, April 15, 1970	
Jensen: Anti-war moratorium demonstrators march.	08:00
Penza with a team of reporters. (WCBS-TV film report.)	
Jensen: The Mekong River in Cambodia is a sea of bodies today.	01:25
Jensen: Captain Ernest Medina suspended today. (Material furnished by CBS News.)	01:27
Jensen: Goodell calls for national referendum on Vietnam.	00:15
Jensen: Vietnam veterans turn in medals.	00:15
Thursday, April 16, 1970	
Jensen: In Cambodia Viet Cong attacked capital of Takeo. In today's fighting 1200 South Viet troops helicoptered.	00:30

	Mins:Secs
Friday, April 17, 1970	
Jensen: In the provincial capital of Takeo in Cambodia, a new massacre of Vietnamese civilians.	00:45
Jensen: In Washington a White House spokesman says there has been no official word on such massacres.	00:25
Kalb: Reports from Pnom Penh. (Material furnished by CBS News.)	02:00
Saturday, April 18, 1970	
Jensen: Cambodia reports that Viet Cong forces have surrounded the capital of Takeo.	00:30
Monday, April 20, 1970	
Jensen: In Cambodia, Viet Cong troops continue to hold the town of Siang.	00:16
McLaughlin: Reverend Richard Fernandez talks about Premier Pham Van Dong of North Vietnam. (Material furnished by CBS News.)	01:54
Jensen: In Paris, top Viet Cong delegate rejects French proposal.	00:22
Tuesday, April 21, 1970	
Benton: President Nixon's decision to withdraw an additional 150 thousand troops from Vietnam, but some questions were raised by Senator Muskie of Maine. (Material furnished by CBS News.)	02:22

Mins:Secs

Tuesday, April 21, 1970 (Continued)

Jensen: In Paris, a spokesman for Viet Cong delegation to peace talks termed President Nixon's announcement "a maneuver aimed at fooling public opinion". Mr. Nixon "prolonging military occupation of South Viet Nam and preventing any progress at Paris talks". 00:30

Jensen: In Cambodia, South Viet continue to operate in Savy Rieng. 00:50

Wednesday, April 22, 1970

Jensen: Four planes lost over Laos. 00:15

Jensen: New York second in combat dead, N.J. 11, Conn. 29. 00:20

Jensen: South Vietnam troop actions in Cambodia. 00:30

Jensen: Father Berrigan and Eberhardt extradited to Maryland on charge of burning draft records. 00:45

Jensen: Coffin case dismissed in Boston. 00:20

Jensen: Sharp losses on Wall Street laid to Southeast Asia. 00:35

Thursday, April 23, 1970

Jensen: President orders phase out of draft deferments, Assistant Secretary Kelley discusses reasons for volunteer army. 03:13
(Material furnished by CBS News.)

Jensen: White House comments on supplying Cambodia with AK 47's. 00:30

Thursday, April 23, 1970 (Continued)	Mins:Secs
Jensen: Cambodian troops putting up little resistance.	00:30
Jensen: Casualty figures.	00:30
Jensen: Communist negotiators reject President's peace appeal.	00:30
Friday, April 24, 1970	
Jensen: Ziegler says President concerned over forty thousand North Vietnamese in Cambodia.	00:45
Quint: Report from Saang. (Material furnished by CBS News.)	01:50
Hebert: Stony Brook students stage hunger strike to protest defense contracts. (WCBS-TV Film report.)	02:10
Saturday, April 25, 1970	
Ubell: News analysis: Effect of Chinese satellite on defense budget.	01:20
Jensen: Rogers speech accuses North Vietnam of violating international accords in Cambodia.	00:30
Jensen: Cambodia rushed reinforcements into highway junction.	00:15
Monday, April 27, 1970	
Jensen: Sihanouk calls for defeat of U.S.	00:30
Jensen: President has not reached decision of supplying arms to Cambodia; Senator Scott favors, Mansfield does not.	01:00

Mins:Secs

Tuesday, April 28, 1970

Jensen: Cambodian troops led by paratroopers opened a drive to re-take the Viet Cong—held Ang Tassom, 40 miles south of Pnom Penh. 00:40

Hart: Barry Goldwater in Cambodia. 01:15
(Material furnished by CBS News.)

Jensen: At Paris Peace Talks, Viet Cong Foreign Minister says Sihanouk's associations with Communist leaders laid the legal basis for North Vietnamese intervention in Cambodia. 00:20

Jensen: Senate Foreign Relations Committee hearing on the impact of the Viet Nam war in the nation's cities. 01:40
(Material furnished by CBS News.)

Jensen: Draft call up but will go down when Vietnamization takes effect. 00:30

Wednesday, April 29, 1970

Rowan: Thousands of South Vietnamese troops launched a major strike across the Cambodian border. 01:00
(Material furnished by CBS News.)

Jensen: Nixon will broadcast tomorrow about Cambodian crisis. Senators voice their views on Cambodia developments. 01:30
(Material furnished by CBS News.)

Thursday, April 30, 1970

Threlkeld: South Vietnamese and American troops try to wipe out Communist bases in Cambodia. 01:40
(Material furnished by CBS News.)

Thursday, April 30, 1970 (Continued)

	Mins:Secs
Jensen: Nixon has more information on Cambodia but some senators disagree with him. (Material furnished by CBS News.)	01:05
Jensen: Wounded in Vietnam were the highest toll in a single week since last September.	00:20

Friday, May 1, 1970

Jensen: Cambodian campaign report.	01:00
Jensen: President confers with Laird and joint chiefs, briefs newsmen. (Material furnished by CBS News.)	05:00
Jensen: Congressional reaction to Cambodia: Fulbright, Mansfield, Scott, Goodell, Hatfield, Griffin, Ottinger. (Material furnished by CBS News.)	04:20
Jensen: Silent Majority Mobilization Committee says move will save American lives.	00:15
Jensen: Student reaction.	00:30
Jensen: President calls most "kids . . . greatest", talks of "these bums blowing up campuses".	00:30
Jensen: Moscow May Day salutes "heroes of Vietnam", does not mention Cambodia.	00:30
Jensen: Fragile calm returns to Ohio State.	00:30
Jensen: President agrees to meeting with Senate Foreign Relations Committee.	00:30
Jensen: Sluggish trading as market falls ascribed to Cambodia.	00:30

	Mins:Secs
Saturday, May 2, 1970	
Jensen: North Vietnam claims U.S. planes bombed two provinces, Pentagon indicates strikes against AA batteries.	01:00
Jensen: Laird discusses bombing at news conference.	00:30
Jensen: Cambodian campaign report.	00:30
Jensen: Mansfield, Fulbright, other senators on upcoming meeting with President. (Material furnished by CBS News.)	01:10
Rich: Loyalty Day Parade report. (WCBS-TV film report.)	02:00
Monday, May 4, 1970	
Jensen: Four students killed at Kent State.	01:00
Potts: Campus reaction NYU, Columbia. (WCBS-TV film report.)	05:22
Jensen: Princeton, Rutgers reaction.	00:20
Jensen: Raids over North Vietnam and Kosygin reaction and Chinese.	01:15
Quint: Cambodia operations. (Material furnished by CBS News.)	02:19
Jensen: Senate Foreign Relations Committee and Javits comments on Cambodia. (WCBS-TV film report.)	02:29
Jensen: Apparent uncertainties over Cambodia send stocks spiraling downward.	00:30

Tuesday, May 5, 1970	Mins:Secs
Jensen: Kent station update.	02:15
Jensen: Washington reactions to Kent State.	01:00
Jensen: Reactions at Washington U., Berkeley, San Francisco, University of Buffalo, City College.	01:15
Rich: NYU demonstrations include Guerilla theatre. (WCBS-TV film report.)	02:00
Potts: Live interview with Dr. Andrew Cordier, president of Columbia.	04:00
Potts: Classes suspended at Columbia to protest South East Asia policy. (WCBS-TV film report.)	03:30
Jensen: Demonstrations at High School of Music and Art, James Madison High School, Sheepshead Bay High School, UN Headquarters.	01:00
Osborne: Analysis of local demonstrations.	01:45
Kalb: Cambodian campaign status, Cambodian troops prepare for showdown 30 miles from Pnom Penh.	02:58
Wednesday, May 6, 1970	
Jensen: President orders staff investigation of Kent State, announces news conference.	00:45
Jensen: Mansfield urges high level commission.	00:20
Potts: Local schools react to Kent State. (WCBS-TV film report.)	04:00
Rich: Seton Hall demonstration results in 23 injuries. (WCBS-TV film report.)	02:30

	Mins:Secs
Wednesday, May 6, 1970 (Continued)	
Jensen: Four fires at Stoneybrook campus.	00:30
Jensen: Plans for mass demonstration in Washington.	00:30
Jensen: Austin, Texas, University of California, Kent State status.	00:30
Hebert: Memorial service for Kent State victim in home town, Plainview, L.I. (WCBS-TV film report)	02:40
Jensen: Cambodian campaign.	01:00
Syvertsen: Report on some casualties in Cambodia. (Material furnished by CBS News.)	02:30
Jensen: House leaders back President's move into Cambodia.	00:30
Jensen: Laird reiterates aim to get out of Cambodia as quick as we can.	00:30
Jensen: June draft call 15,000.	00:15
Jensen: Communists to boycott Paris talks.	00:30
Jensen: Salt talks proceed despite hints that Cambodia might hinder negotiations.	00:30
Jensen: Lindsay speech says majority for peace.	00:30
Thursday, May 7, 1970	
Jensen: White House reports capture of major base complex.	00:30
Jensen: Eight university presidents called to White House.	00:30
Jensen: President summons governors for Monday.	00:30

Thursday, May 7, 1970 (Continued)	Mins:Secs
Jensen: Anthony Moffett resigns.	00:30
Jensen: City schools to close in honor of Kent State victims.	00:30
Penza/Lindstrom: Funeral service for Jeffrey Miller, Kent State victim. (WCBS-TV film report)	06:00
Potts: Demonstrations in various schools and colleges in City.	05:00
Jensen: Washington demonstration plans develop.	01:00
Jensen: Cambodian and Vietnam campaigns.	02:00
Quint: Cambodian troops use tanks for first time. (Material furnished by CBS News.)	02:15
Jensen: House defeats effort to cut off funds for Cambodia.	00:30
Rich: Julliard School of Music students stage peaceful demonstration at Lincoln Center to honor victims of war.	02:30
Friday, May 8, 1970	
Jensen/Rich/Beebe: Hardhats invade Wall Street demonstration on City's day of reflection. (WCBS-TV film report)	09:00
Jensen: Peaceful demonstrations elsewhere in City. (WCBS-TV film report)	01:00
Rojas: Poignant demonstration at Queens high school. (WCBS-TV film report)	05:15

	Mins:Secs
Friday, May 8, 1970 (Continued)	
Jensen: "Peace Now" march in Columbus.	00:30
Jensen: Kent State quiet.	00:30
Jensen: President of University of Wisconsin resigns.	00:30
Jensen: Police and students clash at Buffalo.	00:30
Jensen: 250 colleges closed.	00:20
Saturday, May 9, 1970	
Sefton/Osborne: Thousands mass in Washington.	05:00
Jensen: President meets protestors at monument.	00:30
Jensen: Finch critizes Agnew for heating up climate.	00:30
Rich: Anti-war rally in Brooklyn. (WCBS-TV film report)	01:30
Jensen: Mass. State representative who drafted Constitutionality Bill suicide.	00:20
Jensen: Mayor meets with police, deplores hard-hat attacks, police failures.	00:30
Jensen: Allied force sweeps along Mekong River.	00:30
Monday, May 11, 1970	
Beebe: Construction workers take to streets again. (WCBS-TV film report)	03:00
Jensen: PBA head attacks Mayor's criticism of police at Friday demonstration. (WCBS-TV film report.)	03:08

Monday, May 11, 1970 (Continued)

	Mins:Secs
Penza: Police commissioner said to be near resigning.	03:00
Jensen: Senator Young urges Guard lieutenant's arrest.	00:30
Jensen: Kleindeinst says Guard should not be armed with live ammo.	00:30
Jensen: 450 Colleges on strike; San Diego student immolation; Denver University arrests; Colgate students demand Secretary Rogers resign.	01:00
Jensen: City University, NYU sit-ins continue.	00:45
Potts: Report on other local school demonstrations. (WCBS-TV film report.)	03:00
Jensen: Armada sweeps up Mekong.	00:20
Jensen: Arms cache found in Fishhook.	00:20
Jensen: Rockets fired in Saigon.	00:30
Jensen: Rhieu says troops will go into Cambodia whenever Saigon thinks it necessary.	00:30
Jensen: Phouma announces counter-attack.	00:20
Jensen: President meets with 46 governors.	00:45
Jensen: Congressman Koch meets with Brandeis students. (WCBS-TV film report.)	01:15
Hart: Interview with Governor Sargent on death of Shea. (Material furnished by CBS News.)	

Mins:Secs

Monday, May 11, 1970 (Continued)

Jensen: Senate Foreign Relations Committee votes to floor bill forbidding further military action in Cambodia. 00:30

Jensen: Agnew *TV Guide* article criticizes networks. 00:30

Jensen: Wall Street awaits South East Asia developments. 00:30

Tuesday, May 12, 1970

Jensen: Laird tells Senate Armed Forces Committee Vietnamization ahead of schedule. 00:30

Jensen: Gavin testifies before Foreign Relations Committee. 01:54
(Material furnished by CBS News.)

Jensen: Ottinger and 50 State Legislators call for New York war referendum. 00:30

Jensen: Naval developments on Cambodian Coast, Mekong, Tonkin Gulf. 00:30

Potts: Confrontation between students and hardhats on Wall Street. 04:00
(WCBS-TV film report.)

Jensen: National Silent Majority Committee calls for Lindsay impeachment. 02:00
(WCBS-TV film report.)

Jensen: Students boycott classes in City schools; demonstrations in Albany, Columbia, S.C., and Ohio University, Athens. 00:50

	Mins:Secs
Wednesday, May 13, 1970	
Jensen/Quint: Cambodian campaign. (Material furnished by CBS News.)	04:30
Jensen: Cooper-Church Debate begins; author David Schoenbrun testifies before Senate Foreign Relations Committee. (Material furnished by CBS News.)	02:00
Jensen: Rogers states no support to Cambodian government except limited arms.	00:30
Jensen: Ohio National Guard renews allegation of sniper fire at Kent State.	00:30
Rabel: Calm restored at University of South Carolina.	01:46
Jensen: National Guard on Denver campus.	00:30
Jensen: Suspect arrested in blaze at Institute for Defense Analysis, Princeton.	00:30
Jensen: Students demand shut down at Fairfield University.	02:30
Rojas: Report on NYU strike. (WCBS-TV film report.)	02:30
Jensen: College unrest cuts short term for David and Julie Eisenhower.	00:30
Jensen: Hickel comments on letter cautioning against alienating the young.	00:45
Thursday, May 14, 1970	
Jensen: Market reaches seven-year low due to worry over economy and Indochina.	01:15
Jensen: Laird, Kissinger, and Richardson tell GOP senators they oppose efforts to restrict Cambodian involvement.	00:30

	Mins:Secs
Thursday, May 14, 1970 (Continued)	
Jensen: Percy, Mansfield call for debate on role of President and Congress in conducting war.	00:30
Jensen: Senator Kennedy predicts Senate approval of Cooper-Church, comments on Rogers statements re support of Cambodian government. (WCBS-TV film report.)	02:00
Hart: Senator Tower comments on Senate debate outcome.	01:55
Jensen: President tells Medal of Honor winners nation will look back and honor Vietnam veterans.	00:30
Jensen: Casualty figures.	00:30
Jensen: No progress at peace talks.	00:30
Jensen: 11th offense launched in Cambodia.	00:20
Jensen: Ohio Guard readied in Athens. Colonel Fassinger maintains sniper shot at Guard at Kent State.	00:30
Jensen: Support the war labor rally planned.	00:30
Friday, May 15, 1970	
Jensen: Guard ordered to seal off Athens, Ohio Campus.	00:30
Jensen: AP says 14 colleges shut down.	00:20
Jensen: Demonstrations at Sheepshead Bay H.S., Board of Ed.	01:00
Beebe: Support war rallies in Manhattan. (WCBS-TV film report.)	05:00

	Mins:Secs
Friday, May 15, 1970 (Continued)	
Jensen: President says Congress would limit ability to protect American troops.	00:30
Rather: Speculation on President's Florida trip. (Material furnished by CBS News.)	01:15
Jensen: Mansfield predicts Cooper-Church success.	00:30
Jensen: Lomphat attacked; Ho Chi Minh Trail in Laos bombed.	00:30
Jensen: Japan ready to assist civilians in Cambodia.	00:15
Saturday, May 16, 1970	
Jensen: Kompong Chan surrounded; American base assaulted.	00:30
Jensen: Jakarta conference on Cambodia begins.	00:15
Jensen: Church accuses White House of massive pressure; Mansfield predicts victory.	00:30
Jensen: Armed Forces Day Parade proclaims patriotism. (WCBS-TV film report.)	01:10
Jensen: Rockefeller speaks on Indochina.	00:30
Beebe: Violence erupts in anti-war demonstration at Fort Dix. (WCBS-TV film report.)	03:00
Monday, May 18, 1970	
Jensen: Laird admits American advisers with South Vietnamese in Laos.	00:30

	Mins:Secs
Monday, May 18, 1970 (Continued)	
Hart: Senators Dole and Church interviewed on effect of amendment. (Material furnished by CBS News.)	01:35
Penza: Javits position on Cambodia. (WCBS-TV film report.)	03:15
Jensen: Cambodian campaign.	01:00
Jensen: Pope decries U.S. involvement in Indochina.	00:30
Jensen: Kent State coroners report, investigation.	00:30
Jensen: University of Mass. move to impeach president. (Material furnished by CBS News.)	01:40
Jensen: Student and hardhat confront each other in dialogue from EYE ON NEW YORK. (WCBS-TV film report.)	08:30
Tuesday, May 19, 1970	
Penza: Preparations for pro-war rally. (WCBS-TV film report.)	02:50
Jensen: President meets with Congressional leaders, Senator Scott reports. (Material furnished by CBS News.)	01:15
Jensen: Mansfield accuses administration of violating spirit of Laos ban.	00:30
Jensen: Cambodian campaign.	00:45
Jensen: Mitchell calls this semester history's saddest.	00:30

Tuesday, May 19, 1970 (Continued)	Mins:Secs
Jensen: Whitney Young scores President's epithets to youth.	00:30
Sefton: Precautions against violence at tomorrow's pro-war rally. (WCBS-TV film report.)	03:00
Jensen: Candlelight demonstration at Brooklyn College. (WCBS-TV film report.)	01:00
Wednesday, May 20, 1970	
Jensen: Senate debate on amendment heats up.	00:45
Jensen: Troops use bicycle for relaxation.	00:15
Jensen: American ships join Cambodian along Coast.	00:30
Jensen: Mao declared Indochina brings danger of world war.	00:30
Thursday, May 21, 1970	
Jensen: Fresh troops were ordered onto Hamburger Hill today.	00:40
Friday, May 22, 1970	
Jensen: In Washington, the debate over Cambodia continued today. Defense Secretary Laird said that South Vietnamese troops should not be held to any strict timetable of withdrawal.	00:30
Jensen: Cambodian troops shelled Tonle Bet today.	00:25
Jensen: The American military said today that U.S. helicopter gunships accidentally fired on South Vietnamese marines in Cambodia today.	00:15

Mins:Secs

Friday, May 22, 1970 (Continued)

Wilson: Rumbles of dissatisfaction with Nixon's Cambodian policy growing among Republican leaders in New Jersey. (WCBS-TV film report.) 02:12

Young: Student protest against the war is taking a new direction that has some politicians worried. 02:00

Saturday, May 23, 1970

Jensen: Two South Vietnamese task forces converged today from two directions against a North Vietnamese regiment on Cambodian rubber plantation. 00:22

Spence: Demonstrations for and against administration policies; anti-war march by present-day Angels of Mercy. (WCBS-TV film report.) 02:00

Wilson: The situation in Cambodia may play a decisive role in the local election campaigns in New York. (WCBS-TV film report.) 01:32

Monday, May 25, 1970

Jensen: President re-affirmed his decision to pull all American forces out of Cambodia by June 30. 00:22

Jensen: Senator Edward Kennedy, Senate majority leader Mansfield and Averell Harriman criticize President's Indo-China policy. 00:42

Jensen: Secretary of State William Rogers predicts Nixon Cambodia decision courageous. 00:20

	Mins:Secs
Monday, May 25, 1970 (Continued)	
Jensen: Thousands of Communist troops reported moving deeper into Cambodia.	00:30
Syvertsen: Cambodian farmers caught in the middle. (Material furnished by CBS News.)	01:26
Tuesday, May 26, 1970	
Jensen: Senate produced some action on the controversial Cooper-Church amendment.	00:25
Jensen: Comments on today's vote—Senators Church, Baker, and Griffin. (Material furnished by CBS News.)	01:36
Jensen: Democratic senatorial hopeful Theodore Sorensen cites 1787 State Law that gives State right to intervene on sending its citizens to an undeclared war.	00:22
Penza: Sorensen interview. (WCBS-TV film report.)	01:18
Jensen: In Cambodia today, American troops came under attack in area of Mimot.	00:21
Jensen: Housing Secretary George Romney says America's intervention in Vietnam was a mistake.	00:36
Wednesday, May 27, 1970	
Jensen: Defense Secretary Melvin Laird predicted Nixon's announced withdrawal of 150,000 troops from Vietnam may be met and surpassed by next spring.	00:10

Mins:Secs

Wednesday, May 27, 1970 (Continued)

Jensen: Speaking at a seminar in Washington, Laird said that Nixon doctrine working out as planned. 01:22
(Material furnished by CBS News.)

Jensen: The Senate debate on Cambodia continued today. 00:25

Jensen: American warplanes have struck inside North Vietnam for the first time in three weeks. 00:25

Jensen: In Cambodia, South Vietnamese troops have opened a new offensive near Takeo. 00:15

Jensen: South Vietnamese and Cambodian foreign ministers agreed to resume full diplomatic relations after a 5 year break. 00:22

Thursday, May 28, 1970

Jensen: The Senate today agreed to vote next Wednesday on what may prove to be a test of strength of the Cooper-Church amendment. 00:30

Jensen: Speaking last night at a fund raising dinner in Boston, former Ambassador Goldberg called for an end to fighting in Indochina. 01:00
(Material furnished by CBS News.)

Jensen: Diplomatic source in Phnom Penh said today that Nixon used hot line to inform Moscow that American troops were invading Cambodia. 00:30

Jensen: The toll of American battlefield deaths dropped last week. 00:25

	Mins:Secs
Thursday, May 28, 1970 (Continued)	
Jensen: Communist forces stepped up the fighting in the northern provinces of South Vietnam today.	00:20
Jensen: In Cambodia, Communist troops also went on the offensive.	00:30
Jensen: Cambodia today agreed to resume diplomatic relations with Thailand.	00:20
Friday, May 29, 1970	
Jensen: In Cambodia, a thousand South Vietnamese marines tried to cut their way through a North Vietnamese blocking force to raise the seige of Prey Veng.	00:30
Jensen: In Saigon, student demonstrators disrupted the funeral cortege of Phan Suu.	00:25
Kalb: In China, mass demonstrations to protest the American presence in Cambodia have been organized throughout the country. (Material furnished by CBS News.)	01:50
Jensen: Two infantry officers, Capt. Hartman and Lt. Lee, were charged by the Army with attempted murder for ordering their men to fire into Vietnamese huts.	00:15
Jensen: Hartman's father and Lee's mother were interviewed. (Material furnished by WDAU-TV and KTTS-TV.)	01:30

Saturday, May 30, 1970

	Mins:Secs
Jensen: In South Vietnam, Viet Cong forces mounted a heavy attack on the highland resort town of Dalat.	00:30
Barnow: More than ten thousand anti-war demonstrators staged a Memorial Day peace march down Fifth Avenue. (WCBS-TV film report.)	02:36

OTHER WCBS-TV INFORMATIONAL BROADCASTS NOVEMBER 1969 - MAY 1970

PUBLIC HEARING (Debates on Public Issues)

November 2, 1969

"The War in Vietnam"—Is there a difference between the position of the Johnson and Nixon administrations?

Congressman Allard K. Lowenstein (D-5 N. Y.)
Congressman Lowell P. Weicker, Jr. (R-4 Conn.) 28:00

February 15, 1970

"President Nixon's Asian Policy"—Is the administration committed to withdrawing U.S. forces from Vietnam?

Congressman Edward I. Koch (D-Lib.-17, N. Y.)
Robert W. Duemling, Special Assistant Secretary of State for Eastern Asia and Pacific Affairs. 28:00

NEWSMAKERS (News Interview Series)

One or more questions on Southeast Asia and related topics were addressed by newsmen from WCBS-TV or the press to the indicated guest on the following broadcasts:

November 23, 1969

Senator Jacob K. Javits (R-N. Y.)

December 7, 1969

Senator Harrison A. Williams (D-N. J.)

February 8, 1970

Senator Jacob K. Javits (R-N. Y.)

April 12, 1970

Senator Charles E. Goodell (R-N. Y.)

April 19, 1970

Congressman Richard L. Ottinger (D-25 N. Y.)

May 17, 1970

Theodore Sorenson, Candidate for Democratic nomination for United States Senate from New York.

May 31, 1970

Paul O'Dwyer, candidate for Democratic nomination for United States Senate from New York.

HELP COMES FLYING (Documentary)

Tuesday, March 11, 1969

This broadcast traced an airlift operation supplying blood to area soldiers in Vietnam.

WCBS-TV CAMPAIGN DEBATES NOVEMBER 1969 - MAY 1970

Mins:Secs

Sunday, May 24, 1970

Richard D. McCarthy, Paul O'Dwyer, Richard Ottinger, Theodore Sorensen (N.Y. Democratic Senatorial Candidates)

Jerome Wilson (WCBS-TV Political Editor)

Wilson: Nixon has termed the action in Cambodia as necessary to hasten the end of the Vietnam war.	00:10
Ottinger: I think getting involved in a land war in Asia was the biggest mistake the U.S. ever made.	00:50
Sorensen: U.S. participation in the war in Indochina should be ended.	00:46
O'Dwyer: How long can we stand idly while the President dishonors the country?	00:15
Sorensen: There is slaughter going on in Vietnam.	00:20

Sunday, May 31, 1970

James Scheuer and Jacob Gilbert (22nd N.Y. Congressional District Candidates—Democrat)

Jerome Wilson (WCBS-TV Political Editor)

Wilson: What are your comments on Vietnam war?	00:10
Scheuer: We should get out of Cambodia immediately; Vietnamization policy is a fraud.	00:30
Gilbert: I am unalterably opposed to the war in Cambodia.	00:15

Sunday, May 31, 1970

Mins:Secs

James Quaremba and Nelson Gross (N.J. Republican Candidates for Senate)
Jerome Wilson (WCBS-TV Political Editor)

Wilson: Address yourselves to the administration's policy in Indochina. 00:10

Quaremba: It would suggest disunity to vote against the Cooper-Church amendment. 00:20

Gross: I am in favor of Vietnamization of the war. 00:30

WCBS-TV EDITORIALS AND REPLIES
DECEMBER 16, 1969 - JUNE 4, 1970

Subject	Spokesman	Broadcast
YEAR END: VIETNAM (Editorial)	Robert O'Neil for WCBS-TV	December 16, 1969 6:55 PM
YEAR END: VIETNAM 2 (Reply)	William Ward National Chairman of American Friends of Vietnam	January 5, 1970 6:55 PM
POMPIDOU VISIT—ARMS (Editorial)	Michael Keating for WCBS-TV	March 2, 1970 11:25 PM
LAOS (Editorial)	Robert O'Neil for WCBS-TV	March 14, 1970 6:55 PM
TROOP WITHDRAWALS (Editorial)	Michael Keating for WCBS-TV	March 30, 1970 11:25 PM
TROOP WITHDRAWALS 2 (Reply)	Joanna Misnik, New York Coordinator of the Student Mobilization Committee to End the War in Vietnam	April 13, 1970 11:25 PM
SMALL FAVORS (Editorial)	Robert O'Neil for WCBS-TV	April 23, 1970 11:25 PM
TROOP WITHDRAWALS 3 (Reply)	Charles Wiley, Newsman and Executive Director of the National Committee for Responsible Patriotism	April 27, 1970 11:25 PM
CAMBODIA (Editorial)	Robert O'Neil for WCBS-TV	May 1, 1970 6:55 PM
CHANGE IN TONE (Editorial)	Robert O'Neil for WCBS-TV	May 9, 1970 6:55 PM

Subject	Spokesman	Broadcast
TOLERANCE AND DISSENT (Editorial)	Peter Kohler for WCBS-TV	May 14, 1970 6:55 PM
SMALL FAVORS 2 (Reply)	William B. Seebeck Press Secretary of the National Student Coordinating Committee for Freedom in Vietnam and Southeast Asia	May 15, 1970 11:25 PM
CAMBODIA 2 (Reply)	Charles Wiley, Newsman and Executive Director of the National Committee for Responsible Patriotism	May 18, 1970 6:55 PM
COOPER-CHURCH AMENDMENT	Robert O'Neil	May 19, 1970 6:55 PM
SOUTH VIETNAM AND CAMBODIA	Robert O'Neil	May 29, 1970 11:25 PM
NIXON SPEECH	Peter Kohler	June 4, 1970 11:25 PM

WCBS-TV EDITORIAL

CHANNEL 2, 51 WEST 52 STREET
NEW YORK, N.Y. 10019

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: YEAR END: VIETNAM

Spokesman: Robert O'Neil

Broadcast: December 16, 1969
6:55 PM

This is another in our editorial series assessing the decade of the sixties, and looking ahead to the seventies. Vietnam is tonight's subject.

In the final year of the sixties we have watched a new administration trying to disengage the United States from the decade's great tragedy, the Vietnam War.

We believe that the year has shown that the Nixon administration by now has a plan for this purpose and is following it. But from what we can see, the plan will fall short of thoroughly disengaging the country from the unsound position we have taken up in Vietnam and Southeast Asia.

President Nixon can claim considerable short-term progress. The withdrawal by April fifteenth of another 50,000 troops, announced last night, will mean that American fighting forces in Vietnam will have been cut by about 20 per cent since he came into office. These phased troop withdrawals, combined with a new military strategy to minimize our casualties, and a new draft law to take

WCBS-TV Editorial—Continued

some of the edge off student protestors, all suggest that the administartion is making progress with the problem, both at home and abroad.

And the administration has a strategy, too, for dealing with the North and South Vietnamese. Although Mr. Nixon denies downgrading the peace negotiations, he has clearly shifted his hopes away from them and over to his program of Vietnamization. And here, in our opinion is where the Nixon plan falls short. Because even though Washington succeeds in replacing all American ground combat forces with South Vietnamese in one or two years, this country probably will continue to be called upon to provide artillery, air and other support, involving perhaps as many as 200,000 men.

These men would be used to prop up Saigon's over-taxed combat forces, and to curtail North Vietnamese infiltration, for which no solution has been found to date.

American action against infiltration carries the danger in the '70s of increased American operations elsewhere in Southeast Asia because the infiltration routes pass through Laos and Cambodia.

So all in all, the Nixon program is a welcome change of direction in Vietnam, but, in our opinion, it still does not offer a satisfactory disengagement.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: YEAR END: VIETNAM 2

Spokesman: William Ward

Broadcast: January 5, 1970
6:55 PM

(WCBS-TV said the Nixon administration's Vietnam policy was a welcome change of direction but did not yet seem to offer a satisfactory disengagement from our present unsound position in Vietnam and Southeast Asia. Here with another point of view is William Ward, National Chairman of American Friends of Vietnam.)

In a recent editorial, WCBS-TV criticized President Nixon's program for the phased withdrawal of American troops from Vietnam as "inadequate," mainly because the plan contemplates the indefinite retention of some American forces in that country, and in the words of WCBS-TV "fall(s) short of thoroughly disengaging the (United States) from the unsound position we have taken up in Vietnam and Southeast Asia."

This criticism makes sense only if one accepts the premise that our whole interest and involvement in Southeast Asia has been a mistake; and that we should, therefore, cut our losses and run. I for one profoundly disagree with this premise, and I believe that a majority of my fellow citizens do, as well.

WCBS-TV Editorial Reply—Continued

We are in Southeast Asia to serve several vital objectives: to safeguard for the people of South Vietnam the right to determine their own political future; to prevent a dangerous shift in the Asian balance of power in favor of Red Fascism; to vindicate the reliability of those United States military and political commitments all over the world—in NATO, in Latin America, in the Middle East as well as in Southeast Asia. One of the most persuasive arguments that we are pursuing a wise and necessary course in that part of the world is the fact—so infrequently mentioned by the news media—that every Southeast Asian country (excepting only the Communist regime in North Vietnam) supports the American presence in the region, with varied degree of open commitment.

One may reasonably argue about the management of the struggle in South Vietnam over the past several years. One may reasonably debate whether we should have tried to "Vietnamize" the struggle long ago; or conversely whether President Nixon is now trying to do too much, too rapidly in an effort to hasten the withdrawal of American troops. Some American forces will be required for a time in South Vietnam, in Southeast Asia as a whole, and in Europe under NATO. They will be there to defend the vital interests of the United States.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: POMPIDOU VISIT—ARMS

Spokesman: Michael Keating

Broadcast: March 2, 1970
11:25 PM

During his visit to the United States French President Georges Pompidou has been hard pressed to justify the sale of 110 Mirage jet fighter planes to Libya.

Of course, the French government has a rationale for this transaction, based chiefly on the alleged need to fill a power vacuum in North Africa, where France has historic interests.

But at the end of the chain of reasoning, we suspect, is a characteristic Gallic shrug. After all, the Frenchman might say, if France doesn't sell jets to Libya, somebody else will.

That observation is depressingly true. The Libyan case is a fairly typical example of the universal pattern of arms-peddling by the industrialized nations to the non-industrialized.

Where opportunism and greed is so prevalent, almost nobody has the right to point the accusing finger at anybody else.

WCBS-TV Editorial—Continued

Yet both the United States and France, if they are honest with themselves, should feel a special sense of responsibility.

The United States is responsible, because it has set the pace. Over the past 25 years, we have given away or sold arms totaling by one estimate $50 billion, more than three times the amount exported by the rest of the world put together. Today, we are still the world's largest munitions merchant, with about 40 per cent of the market.

France is responsible too, because lately it has become one of the most aggressive and cynical of the arms peddlers. According to one estimate, only the Americans and Russians outsell the French in this deadly line of merchandise. But what is more disturbing is the repeated disregard Paris has shown for international efforts to keep arms out of areas of crisis—whether it's the Middle East, or the Nigerian civil war, or the Greek-Turkish dispute over Cyprus. Similarly French salesmanship has done a lot to undermine Washington's efforts to persuade Latin American countries to keep down their defense budgets in the interests of regional peace and economic development.

Maybe the visit of Mr. Pompidou is a good occasion for the United States and France to think about the roles they are playing in this insane world-wide arms race. And maybe this is the time for Washington and Paris to begin to work together toward an arms policy more consistent with those ideals of reason and humanity on which both countries were founded.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: LAOS

Spokesman: Robert O'Neil

Broadcast: March 14, 1970
6:55 PM

In his statement on Laos March sixth, President Nixon described two basic missions that American planes are now performing there. One is interdiction—that is, the blocking of the flow of North Vietnamese troops and supplies travelling to South Vietnam over the Ho Chi Minh trail in southeastern Laos.

The other mission is air support for the Laotian army in the north, far from the infiltration routes. There our planes are flying not only reconnaissance but combat support missions. Their purpose is, and I quote the President: "to help prevent the recognized Laotian government from being overwhelmed by larger Communist forces dominated by the North Vietnamese," unquote.

It is this second category of air strikes that has seriously escalated lately in response to dramatic gains by the Communists in the northern area, gains which for the first time in years are threatening the Laotian government itself. Reports of saturation bombing by American B-52s in this area have prompted fears that the Nixon adminis-

WCBS-TV Editorial—Continued

tration might be adopting the discarded Johnson strategy of escalation, and drifting into a second war in Southeast Asia before it has gotten itself out of there first.

Mr. Nixon says this isn't so. But we find it hard to be reassured. Reliable reports indicated that we have been bombing Laos in 1970 as heavily as we bombed North Vietnam in early 1968, and that last year's air losses over Laos may have been as many as one hundred men and three hundred planes. And this is quite apart from reported American casualties and American clandestine operations on the ground, which the President did not mention in his March sixth statement.

In the opinion of WCBS-TV, the United States must sharply limit its involvement in Laos. Only carefully controlled air strikes to interdict the Ho Chi Minh supply line are justified, because they cover the withdrawal of American troops from South Vietnam. Otherwise this country has no national interest in any other kind of military involvement in Laos. As we have said before, we believe that the American attempt to fight Communist expansion in both Laos and Vietnam was a mistake and not worth the cost. The order of the day now should be to disengage ourselves rapidly from these countries, not get in deeper.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: TROOP WITHDRAWALS

Spokesman: Michael Keating

Broadcast: March 30, 1970
11:25 PM

In a few weeks it will be April 15, which President Nixon designated several months ago as the completion date for the latest installment in the withdrawal of American troops from South Vietnam. On that date the authorized strength of our forces there will stand at 434,000.

That figure, as the administration is continually reminding us, represents a 20 percent drop from the maximum troop level of the Johnson period. We are duly impressed, or at least we were back in December. But 434,000 is still an awfully big number. And it is a number that is becoming a bit shopworn, even though it was dusted off for presentation to Congress and the people by the President and the Secretary of Defense in their reports on the progress of Vietnamization. Of course, they had a lot of other brand-new figures. They spoke in glowing terms of the percentage of air sorties now flown by the South Vietnamese air force, the reduction in the percentage of Vietcong among the enemy forces, the number of weapons we have supplied to the self-defense forces in the South Vietnamese villages.

WCBS-TV Editorial—Continued

But they had nothing new to say about American troop withdrawals.

The silence on that score is getting louder and louder, and we wonder whether the staged withdrawal program has slipped the President's mind. Perhaps the new communist threat to Laos, and/or the political upheaval in Cambodia are giving the administration second thoughts about the withdrawal schedule.

Perhaps Washington fears that if we remove any more of the props that support Saigon, the dominoes in Southeast Asia will start to fall.

In the opinion of WCBS-TV, the administration has hardly begun to reduce our excessive large presence in South Vietnam. If it is going to slow up already, then it can hardly be said to have a withdrawal program worthy of the name.

It's time for the President to come up with the next phase of his withdrawal program. And never mind those dominoes.

WCBS-TV EDITORIAL REPLY

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: TROOP WITHDRAWALS 2

Spokesman: Joanna Misnik

Broadcast: April 13, 1970
11:25 PM

(WCBS-TV called upon the Nixon administration to announce the next stage of its reduction of America's excessively large military presence in South Vietnam, since the current stage will be completed as of April 15. Here with another point of view is Joanna Misnik, New York Coordinator of the Student Mobilization Committee to End the War in Vietnam.)

On March 30, WCBS-TV presented an editorial opinion in which they expressed doubt about the credibility of Nixon's phased withdrawal program in Vietnam and called upon the President to implement it by announcing new withdrawals.

It is quite clear that Nixon's so-called withdrawals have not in any way affected the military balance in Vietnam. The current troop level is close to that prevailing during the Spring of 1968. In other words, the war goes on as before. Vietnamization is a smokescreen—an attempt to fool the American people into thinking the war is ending

WCBS-TV Editorial Reply—Continued

while the war is acutally expanded into Laos and Cambodia behind the backs of the public.

The Student Mobilization Committee puts no credibility whatsoever in any so-called phased withdrawal plans of this administration. Our demand is clear: the immediate, total, unconditional withdrawal of all U.S. forces from Vietnam and the rest of Southesat Asia. The Vietnamese and all Southeast Asians have a right to determine their own future without any interference from the U.S.

We know the vast majority of the American people want this war ended now and the GIs brought home. Not some GIs—but every last one now. We are tired of paying 30 billion dollars for a war we don't want through increasing inflation, taxes, and lack of social services.

On April 15, tax day, the antiwar movement will not be listening for a new announcement of a few thousand GIs from Nixon. Instead on April 15 we are calling a day of mass demonstrations to demand an end to this war. In New York, activities will culminate in Bryant Park between 4 and 6 PM for a giant antiwar rally. That's our answer to Nixon. Join us on April 15. For more information, contact, Student Mobilization Committee, 15 East 17th Street, 675-8465.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: SMALL FAVORS

Spokesman: Robert O'Neil

Broadcast: April 23, 1970
11:25 PM

Here at home the Vietnam Mobilization Committee is disbanded and the demonstrators are diverted to the issue of the environment. In Southeast Asia meanwhile, the Communist forces are knocking at the gates of the capitals of Laos and Cambodia.

With President Nixon under so little political pressure at home and so much military pressure abroad, it is perhaps remarkable that he made any troop withdrawal announcement at all this week.

But he did, and at first glance the announcement seems even generous to the dovers. For the first time, the President has committed himself to withdrawals over the long term, rather than the short term. He plans, he says, to pull out 150,000 troops from Vietnam by the end of next spring. Perhaps all of us who want out of Vietnam should be thankful. But if we are, we are being thankful for small favors.

For the withdrawal projected here averages out to the same slow and cautious monthly rate that we have had

WCBS-TV Editorial—Continued

so far. It will leave at the end over 280,000 troops still in Vietnam, half of them presumably combat troops, fighting and dying.

At the same time, the President's announcement is one more step by this administration to close the accounting books on the Vietnam War to the public. For a year, under this plan, the President can claim to be conducting a withdrawal program while keeping the actual rate of withdrawal hidden from public scrutiny. The administration has already presented its budget in such a way that the costs of the Vietnam War are now hidden.

The Nixon administration thus seems to be following the Johnson administration's principle that it is more important to keep Hanoi guessing than to keep the public informed.

WCBS-TV does not subscribe to that principle. And it does not subscribe to a so-called withdrawal program that after two and a half years still leaves the country deeply and indefinitely bogged down in a meaningless war.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: TROOP WITHDRAWALS 3

Spokesman: Charles Wiley

Broadcast: April 27, 1970
11:25 PM

(Last month, prior to the President's recent announcement, WCBS-TV called on President Nixon to come up with the next phase of his troop withdrawal program in Vietnam. Here with another point of view is Charles Wiley, Newsman and Executive Director of the National Committee for Responsible Patriotism.)

While calling for a more speedy withdrawal of American troops from Vietnam, WCBS-TV suggested that our government is fearful that (and I quote): "the dominoes in Southeast Asia will start to fall." The editorial ended with the advice: "never mind those dominoes."

This approach to our country's problems overseas is—I believe—wrong, shortsighted and very dangerous.

The United States has made solemn commitments concerning Southeast Asia. We must not—as a moral nation—ignore them. And if we do not honor our word because it is difficult to do so, other countries will not trust us in the future.—at a time when we may need their trust.

WCBS-TV Editorial Reply—Continued

The attitude of "Let the dominoes fall" is contributing to a steady escalation of appeasement—and isolationism. Some—including at least one Senator—who once called only for the surrender of South Vietnam to the Communists, are now willing to turn over all Indo-China to the Hanoi regime. They once excused their appeasement by claiming that the Communist terror war in South Vietnam was a "domestic affair"—Vietnamese fighting Vietnamese. But now they admit—and tolerate—North Vietnam's open invasion of Laos and Cambodia—even as the dominoes begin to topple.

And many would give the Soviet Union a free hand in the Middle East.

Apparently the lessons of history have been lost. Some seem to have forgotten that power vacuums are filled by agressors—and appeasement leads to bigger wars.

Thirty years ago, those who had watched the dominoes fall in Europe were forced to watch the Nazis level their cities, rape their wives and drag their children into concentration camps.

And eventually the dominoes tumbled across the world and landed on Pearl Harbor, U.S.A.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: CAMBODIA

Spokesman: Robert O'Neil

Broadcast: May 1, 1970
6:55 PM

President Nixon's decision to send American forces across Cambodia's borders raises far more questions than we can cover here. Some of the most important of these questions were passed over in the President's speech last night, such as the consistency of his action with his electoral mandate from the American people, with his assurances to the Congress, with his own Guam Doctrine, and with constitutional and international law.

We will limit our comment to one question the President did raise. Does this move widen American involvement in Southeast Asia? Last night we received his assurance that it does not. It is, he says not an invasion or a long-term occupation of Cambodia territory. The operation will be over once it achieves its limited objective of destroying the headquarters and supply depots of the Vietnamese communists in border sanctuaries, installations which pose an immediate threat to the safety of American troops and the success of his troop withdrawal and Vietnamization programs in South Vietnam.

WCBS-TV Editorial—Continued

We sincerely hope that the President's prediction proves accurate.

As we see it, however, this operation is not likely to be limited, even if it is successful. For one thing, this eight-week operation is not likely to save the present government of Cambodia, although the President seems to imply that it will. The Lon Nol regime and its army are pathetically weak. They are opposed by a patient and battle-hardened force of Communist guerrillas, who are now allied with the exiled former Cambodian ruler Prince Sihanouk. And by yesterday's action the Communists have now been handed an excellent excuse for a military push against the Lon Nol regime which deposed Sihanouk. To meet this challenge will require a crash aid program, investing American arms, money and probably men.

Would the administration make such an investment? Well, President Nixon told us last night that the overthrow of the Lon Nol government would make Cambodia in his words, "a vast staging area and springboard for attacks on South Vietnam." He clearly believes then, that the question of who is in power in Phnom Penh is vital to the American position in Southeast Asia.

We fear, therefore, that by yesterday's action the United States may have been committed to more than a one-shot search-and-destroy mission. We fear it may have been committed to a new war in Cambodia.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: CHANGE IN TONE

Spokesman: Robert O'Neil

Broadcast: May 9, 1970
6:55 PM

In recent days the conduct of the administration has changed in tone, if not in substance.

True, it has not really explained adequately why American troops are tearing up the Cambodian jungle. Nor has it dispelled the nation's grief over the four students killed at Kent State.

But the behaviour of President Nixon and his aides in the past days may at least have contributed to an improvement in the emotional climate.

At his news conference last night, for instance, the President, while he may have said little to justify his Cambodia decision, at least showed himself to be poised, articulate and in command of his polices. His performance tended to disprove speculation that he was becoming isolated in the White House and feeling the strain of his job. Similarly, he has managed to change the image of himself as cut off from the dissenters in the Nation. Whereas last November we had the picture of a president

WCBS-TV Editorial—Continued

who turns on a televised football game to drown out the noise of demonstrators, today we had the picture of a President who stopped in the stillness of dawn at the Lincoln Memorial to talk earnestly with dissenters about the war.

And the rest of the administration seemed today to have taken its cue from President Nixon. There were Attorney General Mitchell and H.E.W. Secretary Finch, patiently discussing administration policies with groups of critical students.

Whether any of this will help persuade the hundred thousand demonstrators who came to Washington to stick to peaceful protest in the future remains to be seen. But it seems to us that the administration on its side has helped considerably to restore at least the semblance of a dialogue.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: TOLERANCE AND DISSENT

Spokesman: Peter Kohler

Broadcast: May 14, 1970
6:55 PM

President Nixon's decision to send American troops into Cambodia, and the manner in which he made and explained that decision have widened the terrible divisions in our society. And as the gulf between those who support and those who oppose the Vietnam war grows greater, arrogant self-righteousness and intolerance grow greater, too.

And it is the growing intolerance and self righteousness of some of the most vocal opponents and supporters of the war that most disturbs us at this point. For as a people, we have best succeeded in solving our gravest problems through public debate, through elections, through the kind of reasonableness that respects opposing points of view. And it is this reasonableness that is so lacking lately in the words of some political leaders—men on both sides of the war issue—and in the actions of some war protesters and in the actions of some counter demonstrators like the roaming bands of construction workers in New York City.

WCBS-TV Editorial—Continued

There is a danger in all this overindulgence in self-righteousness. There is a danger in the arrogant pose by many war supporters that they, and only they, are true red-blooded patriotic Americans. There is the same danger among some war protesters who believe that they and only they are morally right and that anyone else who disagrees is a war criminal. And that danger is that if this trend of intolerance continues, if this division grows, our system of government may be seriously underminded; and it is our system of government that is our best hope for resolving this terrible conflict.

This is a good time for all of us to begin heeding some excellent advice from President Nixon advice which he grieviously has failed to heed at times. The advice is to lower our voices so we can listen to one another. This Nation can't shout its way out of the tragic war in Southeast Asia. We must find our way out through the political process, through our system of government, a system that succeeds through reason and reasonableness.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: SMALL FAVORS 2

Spokesman: William B. Seebeck

Broadcast: May 15, 1970
11:25 PM.

(WCBS-TV criticized the President's recent troop withdrawal announcement saying the rate was too slow. Here with another point of view is William B. Seebeck, Press Secretary of the National Student Coordinating Committee for Freedom in Vietnam and Southeast Asia.)

WCBS-TV expressed unchanged dissatisfaction with President Nixon's announced withdrawal plan, cutting our forces by more than half. We can understand why. Having taken a stand by calling for immediate withdrawal in its first editorial on President Nixon's Vietnamization policy, WCBS-TV's arguments become irrelevant to those who will not accept Vietnam as America's first defeat. We believe them to be in the majority. Perhaps this is why the so called Peace Movement has once again resorted to disruption and violence.

There can be little discussion on the merits of Mr. Nixon's move into Cambodia—which we regard as a long overdue step towards peace—between those who would

WCBS-TV Editorial Reply—Continued

have us totally lose and those who would have us win, no less than peace with freedom.

Discussion must therefore again center on the more basic issue of whether we as a nation ought to win or lose in Vietnam.

After years of impardonable strategic blunders due to lack of resolve and determination the least we owe the Vietnamese and ourselves is a meaningful peace—a peace with freedom.

Such a peace is within our grasp. All we need do is convince the enemy that we are determined to settle for no less.

As we said before, Hanoi seeks to impose on us massive casualties in retreat. Military men estimate that in immediate withdrawal, we stand to lose 20 to 30% of our men.

This and ensuing consequences to our security are too high a price for appeasement of WCBS-TV. Already present withdrawal plans bring into question the safety of our men still in the field. This is no time for some in Congress to play partisan politics with abortive moves to limit the President.

All options must be left open to him lest the enemy underestimate our determination to defend our men.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: CAMBODIA 2

Spokesman: Charles Wiley

Broadcast: May 18, 1970
6:55 PM

(WCBS-TV expressed the fear that, despite President Nixon's assurances, the decision to send American troops into Cambodia may have committed the United States to a new war in that country. Here with another point of view is Charles Wiley, Newsman and Executive Director of the National Committee for Responsible Patriotism.)

The rhetoric of the criticism of American policy has become—I believe—emotional instead of reasoned. The critics—hardened in their position, self-made prisoners of their commitment—often lose sight of logic.

For example, WCBS-TV stated that American attacks on North Vietnamese troops in Cambodia have handed the Communists an "excellent excuse for a military push." This is a contradiction in terms. Obviously, we did not give them an excuse to intervene in Cambodia since they were already there.

The editorial said that the war is being widened because of our military action in Cambodia. It would be more

WCBS-TV Editorial Reply—Continued

accurate to say that a new aspect has been added. Until now, the enemy has been shooting at—and killing—Americans from a privileged sanctuary. The war has been widened only in the sense that our men are now shooting back. Under the reasoning of the critics, a crimewave is widened when police return the fire of gangsters.

WCBS-TV suggested that our action in Cambodia is contrary to international law. Does international law deny the right to defend yourself against an enemy firing from across the border? WCBS-TV has not suggested—nor should it—that the Israelis are breaking international law by attacking, in adjoining countries, the guerrilla bases that are being used to launch raids into Israel.

It was also suggested—as many opponents of the war often indignantly charged—that an "electoral mandate from the American people" has been somehow ignored because we have not abandoned South Vietnam. The facts are that in the last Presidential election the most dovish of the three major candidates—the man supported by most doves—received less than 43% of the vote. Hardly a mandate. And in the most real test of public opinion—at the polls, not in the street demonstrations—Senator Yarborough, an outspoken dove, was soundly defeated by Democrats in a major political upset.

Peace is not served by this kind of criticism. Only the enemy—the agressor who cruelly launched this war—is gaining from the type of rhetoric that bombards us on the homefront.

WCBS-TV EDITORIAL

CHANNEL 2, 51 WEST 52 STREET
NEW YORK, N.Y. 10019

WCBS-TV Editorials express the views of the station's management on important community issues. Because opinions on these issues may differ, WCBS-TV will consider requests for time on the station from those representing differing views.

Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: COOPER-CHURCH AMENDMENT

Spokesman: Robert O'Neil

Broadcast: May 19, 1970
6:55 PM

As you know, President Nixon's decision to send U.S. troops into Cambodia has provoked a heated constitutional debate between the White House and Congress. The debate centers upon the powers to make and conduct war, powers that Congress and the President share according to the Constitution.

President Nixon defends his decision to send U.S. troops across the Cambodian border, citing his constitutional authority as Commander in Chief of the armed services. But some members of Congress challenge his action, invoking the constitutional power of Congress to declare war and to maintain the armed forces. This power, they say, was ignored by the President in his Cambodian decision.

And so to reassert the role of Congress in matters of war and peace, Senator John Sherman Cooper, Republican of Kentucky, and Senator Frank Church, Democrat of Idaho, have introduced a controversial measure. The Cooper-Church Amendment would, as of July 1, ban the

WCBS-TV Editorial—Continued

use of any appropriated funds for retaining American military forces in Cambodia or for providing Cambodians with American advisors, mercenaries or air-combat support. This, then, is an attempt to impose limits, reasonable limits, on the Cambodian adventure through Congress' power over the purse.

While we have some misgivings about this approach, we believe that it is called for in this case. For one thing, it does not conflict with Administration policy; it merely requires the President to live up to his pledge to cease our involvement in Cambodia by the end of June. But more important, the value of this amendment lies not so much in what it specifies, but in what it signifies. The Cooper-Church Amendment signifies resolve of the Senate to be a partner in decisions of war and peace. It tells the President that he erred in committing troops to a Cambodia front without consulting Congress.

We support the goals of this amendment, in both Houses of Congress. We support it not in the expectation that it will unduly restrict the President. We support it rather in the hope that it will reassert the Congress' role in questions of peace and war.

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: SOUTH VIETNAM AND CAMBODIA

Spokesman: Robert O'Neil

Broadcast: May 29, 1970
11:25 PM

The agreement reached this week by the foreign ministers of Cambodia and South Vietnam should concern every American. For that agreement does not involve South Vietnam and Cambodia alone. American interests are involved, deeply involved.

This open-ended agreement gives South Vietnam what appears to be an unlimited fighting role in Cambodia. And South Vietnamese President Thieu has reportedly said that American logistical and combat support would be needed to sustain those operations. As you know, President Nixon has pledged to withdraw U.S. forces from Cambodia by the end of next month, and the Senate is debating a measure that would require the President to cease U.S. military operations in Cambodia by July first.

In our view, this latest move by Cambodia and South Vietnam makes it even more urgent that Washington cease American military operations in Cambodia.

WCBS-TV Editorial—Continued

Otherwise, we fear that U.S. involvement in this spreading conflict will grow, instead of diminish. The agreement between Cambodia and South Vietnam is full of dangers. It will spread thin the South Vietnamese forces already over-extended in Cambodia. It is likely to slow American withdrawal from South Vietnam, because Saigon's forces will be spread so thin at home. And finally, it will widen the war in Indo-China, instead of encouraging a negotiated settlement.

The agreement between Cambodia and South Vietnam is fraught with danger. It is up to President Nixon and Congress to see to it that the danger is theirs, and not ours.

—WCBS-TV—

WCBS-TV EDITORIAL

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NEW YORK, N.Y. 10019

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Alan P. Sloan, Vice President
General Manager, WCBS-TV

Subject: NIXON SPEECH

Spokesman: Peter Kohler

Broadcast: June 4, 1970
11:25 PM

As you know, President Nixon has spoken again about his decision to send American troops into Cambodia, and, again, in our view, he has oversold his decision.

Speaking before a nationwide television audience Wednesday night, Mr. Nixon characterized the Cambodian operation as, and I quote: "The most successful operation of this long and difficult war." This assessment comes after little more than a month of operations in Cambodia, and after more than five years of heavy American involvement in Vietnam. It is, we think, a premature assessment.

To be sure, the Cambodian venture has been successful statistically. And the President was quick to cite the numbers: 15,000 rifles captured; 10 million rounds of ammunition, 2,000 mortars; 11 million pounds of rice.

The fact remains, in our opinion, that all this booty from the Cambodian invasion is not enough to justify it. The success or failure of this decision must be meas-

WCBS-TV Editorial—Continued

ured in more than AK-47s. The success will be determined in whether it speeds or slows the rate of American withdrawal, not just this October, but in the time to come. The success or failure will be measured by whether the invasion widens the warfare in Indo-China, or whether it tends to slow it, to spur a negotiated settlement.

And in these important terms, we say it is much too early to proclaim this operation a success. On the contrary, in our view, the Cambodian venture is fraught with great risks. Those risks include a wider war and slower withdrawal over the long run, because Saigon's forces will be spread so thin at home. And while it is encouraging to note that the President has maintained his timetable for withdrawal to date, it should not be forgotten that more than a quarter of a million Americans will remain in Vietnam one year from now under the President's program.

In our opinion, the most successful operation of this long and difficult war will happen on the day that those men come home.

—WCBS-TV—

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20054

IN RE DEMOCRATIC NATIONAL COMMITTEE,
Washington, D. C.

Request for Declaratory Ruling Concerning
Access to Time on Broadcast Stations

To: The Commission.

REPLY OF THE DEMOCRATIC NATIONAL COMMITTEE

On May 19, 1970 the Democratic National Committee (DNC) requested that the Commission issue as expeditiously as possible a declaratory ruling that:

> Under the First Amendment to the Constitution and the Communications Act, a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969).

This proposed ruling was designed to assist the DNC to overcome artificial and arbitrary barriers erected by broadcasters to inhibit the purchase of air time for comment on controversial issues of public importance and the solicitation of funds.

The need for an expeditious ruling is even more urgent today. As a result of the diligent inquiries of the Commission, it is clear that the broadcasters' policies in this area are confused and conflicting. The inescapable con-

clusion is that the Commission should establish a national, uniform communications policy to guide the networks and thousands of affiliated and independent broadcast stations in the discharge of their public responsibilities which will enable the DNC to solicit funds and comment on public issues.

The following recent developments underscore the need for a prompt ruling by the Commission:

1. The CBS network has informed the Commission that it will continue to refuse to sell time to the DNC for the purpose of presenting a viewpoint on controversial issues of public importance, except during what it considers to be an election campaign. In a voluminous brief to the Commission, CBS does little more than elaborate on the one-sentence justification offered for this policy last March, when it was reported that its "news organization can give a fairer presentation than others." *New York Times*, March 22, 1970.*

CBS has announced, however, that it is reversing its position with respect to the purchase by political parties of spot announcements (not to exceed one minute in length) designed to solicit funds for the party. It is not

* The DNC does not believe it necessary to respond in detail to the CBS brief which, as could be anticipated, raises a parade of imagined administrative and public policy horribles and cries that the DNC proposal portends the demise of America's right to know and learn. This is, of course, the same type of argument which some broadcasters have advanced in opposition to the fairness doctrine itself, to the personal attack and political editorializing rules, to the political broadcast provisions of section 315 and to every other issue which has threatened the "right" of the broadcaster to unrestrained use for profit of the facilities which he is licensed to operate, as a fiduciary, in the public interest. *Red Lion Broadcast Co.* v. *FCC*, 395 U.S. 367, 389 (1969). The fact that ABC and NBC recognize that they can accommodate the DNC program proposal and still meet their obligations under the fairness doctrine is answer enough to CBS.

clear whether these announcements can contain expressions of viewpoints on controversial issues of public importance.

2. The ABC network, while reaffirming its general policy of refusing to "sell time for controversial issue programs or announcements" or to "permit the solicitation of funds . . . on controversial issue broadcasts," has announced that it is now prepared to accept orders for time from major political parties for such programs or announcements. ABC has initiated this policy in recognition of the "vital importance" of the "continued strength and viability of our two party system" and "of a wider base for political contributions." (See attached letter of June 10, 1970, from Everett H. Erlick to William R. Ray).* It is not clear for what length of time its new policy will remain in effect.

3. The NBC network has informed the Commission that it has no policy which prevents it from accepting an order for program time from a major political party for presenting views on controversial issues of public importance. It would also permit such a program to include a solicitation of funds. (See attached letter of June 22, 1970, from Howard Monderer to Hilburt Slosberg.) It is not clear whether NBC would permit short spot announcements, outside such a program, designed for the solicitation of funds for the party.

4. As we indicated in our initial request, (pp. 13-14), in addition to the three national commercial networks, as of April 1, 1970, there were, on the air, 509 commercial VHF television stations, 4,280 standard broadcast stations, and 2,111 commercial FM stations. Any number

* Since ABC has made it clear that it will make the desired time available to DNC, we take no position on ABC's adherence to policies which would restrict access to its facilities by others.

of these stations—some affiliated, some independent—may have a variety of policies which will prevent the DNC from gaining access to the broadcast media.

In view of the considerations detailed in our original request and the developments reported herein, we again respectfully urge the Commission to issue as promptly as possible a declaratory ruling providing that:

a. Under the First Amendment to the Constitution and the Communications Act, a broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as the DNC, for the solicitation of funds and for comment on public issues. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); or alternatively,

b. Any such "general policy" will be taken into consideration—in a manner adverse to the broadcaster—by the Commission in evaluating whether the grant of a broadcaster's renewal application accords with the public interest.

Respectfully submitted,

DEMOCRATIC NATIONAL COMMITTEE

By /s/ Joseph A. Califano, Jr.
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June 29, 1970

[Certificate of Service Omitted in Printing]

F.C.C. 70-861

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

IN RE DEMOCRATIC NATIONAL COMMITTEE,
WASHINGTON, D. C.

Request for Declaratory Ruling Concerning
Access to Time on Broadcast Stations

MEMORANDUM OPINION AND ORDER

(Adopted August 5, 1970; Released August 12, 1970)

BY THE COMMISSION: COMMISSIONER COX CONCURRING AND ISSUING A STATEMENT; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT.

BACKGROUND—REQUEST AND PLEADINGS

1. On May 19, 1970, the Democratic National Committee (DNC) filed with the Commission a request that the Commission issue a declaratory ruling that

"A broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as DNC, for the solicitation of funds and for comment on public issues." [1]

2. DNC seeks a declaratory ruling on these matters because of its desire to purchase time on individual broadcast stations and networks for the purpose of pre-

[1] Comments with respect thereto were filed by the American Broadcasting Company (ABC) on June 11, 1970 and by the Columbia Broadcasting System (CBS) on June 22, 1970 and a statement by the National Broadcasting Company (NBC) was filed on June 22, 1970.

senting programs and spot announcements of varying duration, some of which would be devoted to the solicitation of funds while others may contain comment on various controversial issues of public importance. The campaign envisioned will, according to DNC, require the expenditure of "thousands of dollars" and thus it seeks assurance that it will be able "to obtain the access to the broadcast media which implementation of the plan demands." It appears that in the latter part of March, 1970, CBS rejected a request by DNC to purchase one-half hour of prime time for the presentation of an issue—oriented program which would have included an appeal for contributions to the Democratic Party. It is said that CBS' position at that time was that it would sell time for political purposes only during election campaigns. DNC also approached NBC and was told that that network would make available prime time for purchase by the Committee for a program presenting the views of the party on important public issues and including a solicitation of funds for the party. It is not clear that DNC approached the ABC network in view of the latter's alleged general policy against solicitation of funds other than for charity and with network approval. By reason of the foregoing and the alleged common policy of individual broadcast stations to decline to sell time for spot announcements or programs for the broadcast of views on controversial issues of public importance or for the solicitation of funds, DNC states that its problem—access to broadcast licensees for the presentation of its programs—can be resolved only through the issuance of the blanket declaratory ruling described in paragraph 1, *supra*.

3. We believe that the policy matters raised by DNC are, to a substantial extent, appropriate for consideration and that a full statement of our views will provide helpful general guidance for the public and Commission licensees. We, however, do not believe that all of the va-

rious matters raised by DNC are susceptible to the declaratory order sought and we cannot at this juncture rule upon every conceivable factual situation which may arise.

4. In support of its request, DNC has set forth some pertinent financial considerations of present-day political campaigning and the development of a narrow rather than a broad-based financial support of political parties.[2] DNC contends that access to mass media, particularly radio and television, is necessary to attract the attention and seek the support of potential small political contributors. It is only in this way, DNC contends, that a healthy political system can function. DNC urges that its proposed broadcast campaign should not be precluded by a variety of differing station and network policies and that the question of access to broadcast media for responsible groups should be subject to a uniform national policy. The arguments advanced by DNC are based upon constitutional, statutory and public policy grounds.

5. The constitutional argument advanced by DNC is essentially that the Supreme Court's decision in *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969) reaffirmed the public's First Amendment right to hear contrasting views on issues of public importance and "employed language that would extend to members of the public the right of access to broadcast facilities." DNC

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[2] For example, in 1968, $90 million was expended on political use of radio and television (equaling about 1/3 of the total expenditure on political campaigning for the year). See Alexander and Myers, *A Financial Landslide for the GOP*, Fortune. March 1970, pp. 104, 189. Another indicative statistic is the fact that in 1956, only 40% of the contributions to the Democratic Party exceeded $500 whereas the figure had increased to almost 80% in 1968. According to DNC the narrowing of the political contribution base can result in a dangerous concentration of the sources of revenue in special interest groups which, in turn, threatens the entire democratic process.

argues that the network policies of ABC and CBS represent arbitrary barriers to broadcast facilities contrary to the law as expressed in *Red Lion, supra.* DNC suggests that under the *Red Lion* standard reasonable restrictions by broadcasters are permissible—e.g., limitation of use of broadcast facilities to responsible spokesmen and protection against use of facilities for libelous presentations or those in bad "taste."

6. According to petitioner, the overriding public policy consideration requiring the declaratory ruling is that the public airwaves—the most powerful communications medium in our society—which are used to solicit funds for "soaps, brassieres, deodorants and mouthwashes" should be utilized to solicit funds to enhance the exchange of ideas. DNC contends that regardless of whether the Commission issues the declaratory ruling requested, the refusal of a broadcaster to sell time to DNC should be evaluated adversely to such broadcaster at time of renewal. The reason for this, DNC urges, is the importance of the broadcast media to political expression (*Farmers Ed. and Coop Union* v. *WDAY*, 360 U.S. 525, 529-30 (1959)); the public interest consideration inherent in broadcasters making time available for political broadcasts (*Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 20 RR 1901 (1960)); the Commission's prior holding that an arbitrary limitation of coverage of an election campaign prior to the campaign was contrary to the public interest (Citing *Homer R. Rainey*, 3 RR 737 (1947); *City of Jacksonville*, 12 RR 113, 180j (1959); and *Loyola University*, 12 RR 1017, 1099 (1956)) and that the Commission's ruling in *Women's Strike for Peace* (letter of November 22, 1965) predates *Red Lion* and, to the extent it conflicts with that decision, is no longer controlling. Finally, DNC notes that it is seeking not a ruling which would require a broadcaster to accept particular programs or announce-

ments, but only that broadcasters may not establish arbitrary barriers to access by responsible groups, such as DNC, contrary to the First Amendment and *Red Lion, supra*, or that the establishment of such barriers is contrary to the public interest.

7. *Response of the Networks:* In response to the DNC request, American Broadcasting Companies, Inc. (ABC) submitted portions of its "standards and policies" (The complete version has been filed in BAL-5733, Exhibit I-B, Attachment B, Section III). ABC recites its standards relating to solicitation connected with appeals for charity (no solicitation without specific permission of ABC) and appeals related to religious broadcasts (solicitation permitted in prescribed manner not here relevant), but states that its policy is not to sell time for solicitation of funds in other situations, absent special public interest considerations. It is ABC's judgment that DNC's request is concerned with "the continued strength and viability of our two party system" and is thus a "special public interest consideration" justifying an exception to its normal policy of not selling time for solicitation purposes.

8. ABC states that with respect to controversial issues of public importance, there are "dozens" of "responsible entities" who would wish to purchase time to present their views "were we to open the door." ABC contends that it would be "reasonable to anticipate a flood of such requests." Thus, ABC states, it will adhere to its general policy against the sale of time for controversial issue programs and announcements. However, ABC under its "special public interest consideration" standard would ". . . be prepared, consistent with its other obligations, to accept such orders for time from major political parties as can be accommodated on a reasonable basis."

a. CBS' lengthy response to the DNC complaint advances three major arguments: (1) that DNC has mis-

understood CBS' policies relating to presentation of controversial issues and that CBS' policies insure full and fair presentation of such issues; (2) that a regulatory policy which imposes common carrier obligations on broadcasters would be contrary to the public interest; (3) that there is no constitutional or statutory right to compel broadcasters to carry the DNC programs; and, (4) that such obligation would be contrary to the Communications Act and Commision precedent.

9. With respect to the first major argument, CBS argues that DNC has not alleged violation of the fairness doctrine but rather seeks to take presentations of controversial issues away from the control and supervision of the licensee. CBS states that if licensees were required to permit the purchase of air time for the presentation of views on controversial public issues, the nature of broadcasting would be radically altered to the detriment of fair, objective and balanced information available to the listening public.[8] CBS has followed a policy of refusing the sale of broadcast time for presentations of controversial issues in favor of providing "significant opportunities" for such discussions without charge to proponents of various viewpoints through news and information broadcasts. To sell time for presentations on public issues, argues CBS, would result in the preemption

[8] CBS asserts that it has served the public by presenting issues and viewpoints within a balanced program schedule utilizing newsworthiness as the sole criterion. CBS emphasizes the growth of public affairs and news presentations during the 1968-69 v. 1956-57—e.g., total hours of news and public affairs broadcasting—1,354 v. 675; prime presentations—192 v. 34; regularly scheduled hard news 6:00 p.m.—11:00 p.m., 338 v. 130; and total hours of news documentaries 100 v. 37. In addition, CBS also presents a comprehensive exhibit to demonstrate the coverage given one of the major issues of the day by CBS and WCBS-TV—the Indochina War and domestic reaction to it. This Indochina exhibit includes a minute and second analysis of CBS' total coverage of this issue and runs over 100 pages.

of the limited broadcast frequencies by those with strong financial resources which would "necessarily distort the manner in which issues were presented" to the public. CBS asserts that under its present policies, it provides a "high proportion of direct presentations of views" by "the actors in the events of the day" and thus, aside from fully informing the public of differing viewpoints on controversial issues, also provides an opportunity for those holding differing viewpoints to present their own views. These direct presentations, CBS notes, are part of its overall effort to inform the public fully and fairly and are not permitted to become an instrument of "partisan advocacy." The First Amendment, CBS argues, is primarily concerned with the right of the public to be informed—as opposed to the right of the public to speak or to be heard.

10. CBS' policy against sale of time for the presentation of views on controversial issues does not apply to broadcasts on behalf of political candidates or ballot propositions. This exclusion is based upon CBS' belief that the intent of Section 315 is to facilitate the discussion of political issues by legally qualified candidates; such political broadcasts may include a direct appeal for funds so long as CBS is not involved in the collection or handling of such funds. CBS also states its intention to permit the purchase of a special category of spot announcement (up to one minute in length) for the purpose of political fund raising which need not be on behalf of political candidates or ballot propositions.

11. With respect to the common carrier argument, CBS states that such a policy would be contrary to the public interest because partisan presentations would diminish the time available for other news, sports and entertainment programs and would result in an "auction" to the highest bidder to determine what issues will be

discussed and how such discussion will be conducted. Moreover, CBS queries, would the broadcaster then be responsible for restoring the balance? How would a network choose among competing bidders if not enough time were available for all? What standard is to be used to determine "responsible entities?" CBS argues that DNC's proposal would divest the licensee of responsibility for controversial issue programming and would ultimately require the Commission to make judgments as to the specific programs which are presented or rejected.

12. The legal arguments which CBS advances—i.e., that DNC's request is without constitutional or statutory basis, that Commission compulsion to carry DNC's programs is barred by the Communications Act, and that the action which DNC requests of the Commission is contrary to the Commision's own policy and precedent—are based primarily upon the assertion that no particular person or group has the right to speak over broadcast facilities and that to assert such a right would ultimately require the Commission to assume the role of a censor or arbitor of specific programs, contrary to its long-established policy of avoiding such governmental involvement. CBS asserts that the *McIntire* case [4] stands for the proposition that "broadcasters, though licensed by the Commission and subject to its valid regulations, are not publicly owned faciliites, and there is no First Amendment right to purchase time on radio or television stations." CBS further asserts that nothing in *Red Lion* [5] indicates that *McIntire* is no longer good law or that, apart from Section 315, there is any legal obligation for broadcast licensees to sell time. Rather, CBS says, *Red Lion* merely

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[4] *McIntire* v. *Wm. Penn Broadcasting Co.*, 151 F.2d 597 (3rd Cir. 1945) *cert. den.* 327 U.S. 779 (1946).

[5] *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969).

sustained long-standing Commission policies which are wholly inconsistent with DNC's request.

13. To accede to DNC's request, CBS argues, would violate Sections 3(h) and 326 of the Communications Act, which taken together establish that the licensee—not the Commission—is to exercise the power of program selection. The right of *personal* reply to material previously selected for broadcast is limited to equal opportunity for political candidates, replies to personal attacks and replies to station political endorsements. CBS contends that the legislative history of the Communications Act supports its assertion that the statutory scheme envisions a system in which the broadcaster is left with the initiative of assuring that programs presented are in the public interest.

14. Finally, CBS asserts, DNC's request is "fundamentally inconsistent" with the concept of licensee responsibilities and specifically, contrary to the Commission's prior holdings that "the Commission has no power to require a broadcaster to carry or refrain from carrying any particular program, or to prescribe the content of any program presented over the air." Letter to *Women's Strike for Peace*, November 22, 1965.[6] Nothing in the *Red Lion* decision, *supra*, states CBS, indicates that the Court contemplated the abandonment of "traditional FCC fairness policies" and the adoption by the FCC of a common carrier theory as set forth in the DNC request.

15. NBC has no policy which would prevent the purchase of program time envisioned by DNC or the solicitation of funds for the party during such a program.

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[6] To support this proposition, CBS also cites *McIntire* v. *Wm. Penn Broadcasting Co., supra*; 1949 *Editorilizing Report*, 13 FCC 1246; 1960 *Report and Statement of Policy in the En Banc Programming Inquiry*, 25 Fed. Reg. 7291 (August 3, 1960); and letter to *Judy Collins*, March 24, 1970.

DNC states that it is not clear whether NBC would permit short spot announcements designed for the solicitation of funds for a party, but this simply points up the desirability of a concrete factual situation—namely, of DNC making a specific request, instead of the general, more vague approach which it has taken here.

DISCUSSION

Part I. The right of responsible entities to purchase time for comment on public issues

16. The DNC petition raises two separate questions: (i) the asserted right of political parties to purchase broadcast time to solicit funds, and (ii) the asserted right of responsible entities to purchase time for comment on public issues. In this Part I, we deal with the second question.

17. That question goes to the heart of the system of broadcasting which has developed in this country—i.e., the licensing of private entities under the public interest standard. While the issues raised by the DNC petition are fundamental, they are not open. They have long been settled adversely to the DNC position, by the statute, by the Commission, and by the Courts. We shall discuss the present system and its statutory support, the relevant precedents, and the policy considerations.

18. The system which Congress has evolved has been described in full in the landmark decisions in this field—*NBC* v. *U.S.*, 319 U.S. 190 (1943), and *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, 395 U.S. 367 (1969). We shall not repeat that discussion here. It is sufficient to note that it is based upon the unique nature of radio—that "unlike other modes of expression, radio inherently is not available to all. Because it cannot be used by all, some who wish to use it must be denied." (*NBC* v. *U.S.*, *supra*,

at 226.)[7] To resolve the chaotic situation which had resulted, Congress decreed a system of licensing private entities for short terms, upon the condition that their operations serve the public interest. It is thus incumbent upon these public trustees to fashion schedules which do meet the needs and interests of the public. To do so, the broadcaster must allocate programming among the several categories (e.g., entertainment, instruction, news, public affairs) and, within those categories, must choose among the many competing requests for air time. See *Report on Editorializing*, 13 FCC 1246, 1247-48 (1949). However, there is one special obligation which the Commission has stressed—that broadcasters must ". . . devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station" (*id.* at p. 1249). Indeed, the Commission has stressed that it has allocated so much spectrum space to broadcasting, basically because of the great contribution which broadcasting can make to an informed public opinion on the vital public issues of the day. *Ibid.*, *Storer Broadcasting Co.*, 11 FCC 2d 678. It follows that the Commission can and must require the achievement of that allocation purpose by its broadcast licensees. See Section 303(b); *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, *supra* at p. 394. In short, as stated by the Court in *Red Lion*, *supra*, at p. 394, the licensee is ". . . given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern."

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[7] The Court recently reaffirmed this vital distinction in *Red Lion* (*supra*, at 388): "Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."

19. The Commission has consistently made clear that with some exceptions not here pertinent, the licensee has discretion in discharging that obligation. Thus, in its basic *Editorializing Report*, the Commission stated:

> It should be recognized that there can be no one all-embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues. Different issues will inevitably require different techniques of presentation and production. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as whether the subject is worth considering, whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time, or whether there may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person making the request . . . .

This same policy is set out in the Commission's 1964 *Fairness Primer*, 29 Fed. Reg. 10415, 10416; cf. also 1960 *Programming Statement*, 25 Fed. Reg. 7291 (1960). In line with these general precepts, we have consistently held, in case after case, that with certain exceptions not here involved, no individual has a right to express his particular views by means of a broadcast facility.[8]

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[8] *Dowie A. Crittenden*, 18 FCC 2d 499 (1969); *Mrs. Margaret Z. Scherbina*, 21 FCC 2d 141 (1969); *Democratic State Central Committee of California*, 19 FCC 2d 833 (1968); *Boalt Hall Student Association*, 20 FCC 2d 612 (1969); *Mrs. Madalyn Murray*, 40 FCC 647 (1965).

20. While the licensee thus has considerable discretion in discharging "the twofold duty" stated in *Red Lion, supra*, at 377—to devote a reasonable amount of time to public issues and to do so fairly—that discretion must be exercised consistent with the public interest standard. The most basic consideration in this respect is that the licensee cannot rule off the air coverage of important issues or views because of his private ends or beliefs. As a public trustee, he must present representative community views and voices on controversial issues which are of importance to his listeners (*Red Lion, supra*, at 389, 390, 394). This means also that some of the voices must be partisan. A licensee policy of excluding partisan voices and always itself presenting views in a bland, inoffensive manner would run counter to the "profound national commitment that debate on public issues should be uninhibited, robust, and wide-open." *New York Lines Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964); see also *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, 395 U.S. 367, 392 (n. 18) (1969); *Storer Broadcasting Co.*, 11 FCC 2d 678 (1968); *Anti-Defamation League of B'nai B'rith*, 9 FCC 2d 190, 191 (1966), affirmed *Anti-Defamation League* v. *F.C.C.*, 403 F. 2d 169, 170 (1968) (C.A.D.C.), *cert. den.*, 394 U.S. 930 (1969). In sum, as stressed in the *Editorializing Report, supra*, at p. 1249:

> It is this right of the public to be informed, rather than any right on the part of the government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting.

See *Red Lion Broadcasting Co. Inc.* v. *F.C.C., supra*, at p. 390:

> It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here.

21. With this as background, we turn to the DNC petition. That petition seeks to overrule the above policy and to require licensees to sell time to any responsible entity to comment on a public issue. Using the CBS response as an example, we note that it would require a holding that CBS' policy in this area is inconsistent with the public interest, because although it recognizes its obligation to devote a reasonable amount of time to controversial issues of public importance (and has submitted a showing of its increasing efforts in this respect, including during prime time hours), and to do so fairly by providing ". . . significant opportunities for such [broadcast] discussion without charge to partisans of various viewpoints in [its] news and information broadcasts" (p. 3, CBS Response), CBS will not sell time for the expression of viewpoints on public issues (with the exception of political broadcasts). It is important to bear in mind that DNC has not alleged that CBS or any other licensee has failed to discharge the above-noted obligations of the fairness doctrine. Thus, what is involved in the DNC request is a question whether there is a right of access to broadcast facilities by "responsible entities" over and beyond the fairness doctrine right of the public to be informed.

22. The DNC position—that the licensee, upon request, must sell time to any responsible entity for comment on public issues—runs counter to the statutory language and the legislative history. That history shows that Congress specifically debated and rejected the idea of the licensee being required to act as a common carrier with respect to transmission of comment on public issues. See Sen. Rep. No. 772, 69th Cong., 1st Sess., p. 4; 67 Cong. Rec. 5560-5561, 12501-12504. The Act reflects this. Section 3(h) states that a broadcaster shall not be deemed a common carrier. Section 315(a) sets out the pertinent statutory standard—that the licensee must operate in the

public interest and must afford reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance. This language cannot be squared with the DNC position; had Congress adopted such a position, the statutory prescription would have been entirely different (e.g., . . . "including the sale upon request of time to responsible entities for presentation of a viewpoint on controversial issues of public importance"). The legislative history makes clear that the language of Section 315(a) is a "restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (H. Rep. No. 1069, 86th Cong., 1st Sess., p. 5 (1958)—that is, as the legislative history shows, the principles set forth in the basic *Editorializing Report*. That this is the statutory scheme is further shown by the consideration of the second sentence of Section 315(a)—that "no obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate." The purpose of this provision is to make clear that the broadcaster is not a common carrier as to political broadcasts—that he may exercise discretion as to the time to be afforded broadcasts by candidates. See *Memorandum of F.C.C.*, Hearings before the House Subcommittee of the Interstate and Foreign Commerce Committee, 88th Cong., 1st Sess. on H. J. Res. 247, pp. 84-90 (1963) (to the effect that while the licensee has discretion, he cannot adopt a policy of not devoting a reasonable amount of time to political broadcasts). It would make no sense to hold that the licensee has discretion whether or not to sell time for the most important controversial issue programming of all—the political broadcast by the candidate (see discussion within as to the preferred position of such programming), but has no such discretion as to other controversial issue programs (e.g., by a candidate's supporters; by partisans of a particular viewpoint on some public issue).

23. The administrative and judicial precedents reflect the statutory scheme. The Commission's pronouncements are long established and consistent. See, e.g., *Report on Editorializing*, 13 F.C.C. 1246, 1249 (1949); 1960 *Programming Statement; Women's Strike for Peace*, November 22, 1965. The court cases are to the same effect. *McIntire* v. *William Penn Broadcasting Co.*, 151 F. 2d 597, 600-601 (C.A. 3), *cert. den.* 327 U.S. 779; *Massachusetts Universalist Convention* v. *Hildreth and Rogis Co.*, 183 F. 2d 497, 501 (C.A. 1). DNC argues that these cases are no longer relevant in light of the Court's decision in *Red Lion*, and that that decision establishes the correctness of its position. We do not so read *Red Lion*. The Government's brief pointed up the nature of the licensee's responsibility under the *Editorializing Report*, *supra*, at pp. 14-17, 31-32, and the Court recognized the report "as the principal summary of [the Commission's] *ratio decidendi* in cases in this area" (p. 1251). The Court at the outset noted "the twofold duty" imposed by the *Editorializing Report* and the manner in which the obligations under the general fairness request differed from those under the personal attack corollary (pp. 371-379).[9] The Court's decision is based, we believe, on this foundation. The thrust of that decision is not that the broadcast licensee is a common carrier, required to sell time to all comers on public issues, but rather that he is a public trustee—a proxy—who must present *representative* com-

[9] Thus, the Court stated: "These personal attack and political editorializing obligations differ from the general fairness requirement that issues be presented, and presented with coverage of competing views, in that the broadcaster does not have the option of presenting the attached party's side himself or choosing a third party to represent that side. But insofar as there is an obligation of the broadcaster to see that both sides are presented, and insofar as that is an affirmative obligation, the personal attack doctrine and regulations do not differ from preceding fairness doctrine." *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. at 378.

munity views and voices on controversial issues. The Court's decision thus stresses the right of the public to be informed—not the right of the broadcaster or any individual or group to speak over broadcast facilities. The private censorship by broadcasters which the Court rules out is that which would prevent the presentation of representative community views or voices.

24. There are strong policy arguments in support of the Congressional scheme. We have noted that broadcasting is inherently not open to all (paragraph 18, *supra*). That is true equally with respect to the common carrier access approach urged by DNC. The result could well be a return to the chaotic situation of radio's early days. Since the broadcast medium is a limited one, the amount of time to be devoted to public affairs—as against the other needs and interests of listeners—is also limited. This balance between the categories could be drastically skewed by a requirement that the broadcaster must make available time slots for the discussion of a controversial issue. Further, the public's agenda for discussion of public issues would then be set substantively and increasingly by the affluent—by the person or group which ". . . has the financial resources and interest to purchase sustained access to the mass communications media . . ." (*Banzhaf* v. *F.C.C.*, 405 F. 2d 1082 (C.A.D.C. 1968), *cert. den.*, 396 U.S. 842). Since the amount of broadcast time for discussion of controversial issues is limited and since the licensee must afford reasonable opportunity for discussion of both sides, the purchase of substantial blocks of time for a campaign by, say, the oil industry to discuss the issue of the oil depletion allowance would impose the burden to present reasonably the other viewpoint, and in turn would inevitably cut down on the amount of time for discussion of other issues. But we believe that such allocations of limited time are to be made on the basis of the *public* interest—not that of any private group, how-

ever powerful or affluent. Further, the public trustee would lose control over the important aspect of the manner in which the public is to be informed. We recognize that in some instances short spot announcements may serve a useful purpose in this area (see *infra*, p. 17). But we have also pointed up the limitations as to many issues of this manner of informing the public. See e.g., Hearings before the Senate Commerce Committee, H.R. 6543 (1969), pp. 142-143; *Voters Time Rept.*, p. 15. A licensee which reasonably made the judgment that an issue was too complex to be discussed in a 30-second commercial —that "hawking" the issue like a soap did not serve the public interest—would find that judgment frustrated by the DNC policy; it would be required to sell the spots and ordered to make time available to opponents on a similar basis. See *Cullman Broadcasting Co.*, 40 FCC 516 (1963); *KING Broadcasting Co.*, 10 FCC 2d 968, 970 (1967).

25. This last point—the application of *Cullman*—merits further discussion. The *Cullman* principle was developed to deal with the situation where the broadcaster has sold time to one side to present its views, has not presented or made plans to present the contrasting viewpoints, and rejects programming which he deems suitable to present those viewpoints, unless the party offering such programming will pay for its presentation. We held that the licensee could not properly insist upon payment in such circumstances. The paramount public interest, we stressed, is the right of the public to be informed. The licensee has adjudged that an issue is of importance to its area by presenting the first viewpoint; that being so, the public's right to hear the other side cannot turn on whether the licensee received money.[10] This approach perfectly fits the public trustee concept. It does not fit a

[10] For the different application of *Cullman* to the political broadcast field, see *Letter to Nicholas Zapple*, FCC 70-598 (1970).

common carrier approach. For under the latter system, the licensee has to sell the time, no matter the amount, and then finds himself having to afford free time to the proponents of the contrasting viewpoint, again no matter what the effect on his ability to serve the public interest. Further, under a common carrier approach, each side is usually relegated to purchase, with no "*Cullman*" rights. We believe that *Cullman* is a correct and sound doctrine which ties in with the public trustee concept and best serves "the public interest in the larger and more effective use of radio" (Section 303(g)).

26. In connection with the above discussion, we should note that there is of course no Commission policy thwarting sale of time to comment on public issues. Licensees are free to do so, with the caveat that the fairness doctrine, including the *Cullman* aspect, must be observed. The critical issue is whether the licensee, to discharge either of "the twofold duties" noted at the outset—to devote a reasonable amount of time to issues of public importance and to do so fairly—must sell some time to comment on public issues. The foregoing discussion makes clear that the licensee need not do so. If, for example, CBS chooses not to sell time but rather to fulfill its obligation on a sustaining basis in the manner disclosed in paragraph 9, *supra* (e.g., to provide significant free opportunity for partisan presentations), that choice is within its discretion. What is crucial is that the licensee does meet its obligation "to operate in the public interest and afford reasonable opportunity for the discussion of conflicting views on issues of public importance" (Section 315(a).)

27. Finally, we point out that the Commission does recognize the importance of fostering "a multitude of voices" in the discussion of public issues. Thus, it sought to promote the growth of FM radio, UHF television, and noncommercial educational broadcasting, and is seeking

to promote a new technology which can make a most significant contribution in this respect—cable television. Because of the potentially great number of channels, cable opens up the possibility of common carrier channels, public access channels, etc. See Notices of Proposed Rule Making In Dockets Nos. 18397A and 18874, 23 F.C.C. 2d ——, released July 1, 1970. But the policy in the broadcast field is shaped by the inherent characteristics of that field. As we have shown, that policy is based on the right of the electorate to be informed, and is an issue-oriented "right of access," not the right of any individual to access.

28. At the risk of some repetition (see particularly pars. 24, 25), we believe it appropriate to take up the position set forth in the dissent of Commissioner Johnson.[11] We cannot accept the position of the dissent that the course we are taking conflicts with the First Amendment. As we understand it, the dissenting opinion of Commissioner Johnson urges that the operation of a broadcast station is analogous to the administration of a public facility, such as a park or a municipal bus (whether publicly or privately owned), and that once the facility is appropriately opened for the expression of views on public issues or commercial advertisements, it is a denial of First Amendment rights to reject or censor a proffered announcement constituting constitutionally protected speech by one willing to pay the customary rate, if there is ordinarily a charge. While we need not disagree with the premise that the Commission's regulation of broadcast stations under the Communications Act must meet First Amendment standards, we think that the dissent—because it ignores established First Amendment policy in

[11] That dissent is addressed also to the Commission's decision in the *BEM* case, F.C.C. 70 ——, issued this day. Our discussion here is of course equally applicable to the *BEM* case, and we so stated in that opinion.

this area—posits a non-existent individual right of access to broadcast facilities.

29. First of all, to the extent that the dissenting opinion urges a near-absolute right of any person who has the money to buy time, it would create a common carrier situation which Congress after due deliberation specifically rejected in Section 3(h) of the Communications Act, 47 U.S.C. § 153(h). Apparently recognizing this collision with the statute, the dissent states (page 25) that Congress and the Commission have permitted a form of private censorship which is inconsistent with the First Amendment. We must note in this connection that it is beyond the power of an administrative agency to declare its governing statute to be unconstitutional. *Central Nebraska Pub. P. & I. Dist.* v. *Federal Power Commission*, 160 F. 2d 782, 783 (C.A. 8, 1947). However, if that infirmity did not exist, we would have no constitutional qualms about our present decision.

30. In its assertion of the unconditional (except for suggested reasonable limitations on time, place, and manner)[12] right to buy time, the dissenting opinion takes no account of the basic, constitutionally valid policy of the Communications Act that because radio is "inherently not available to all," *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 226, there is a public duty adhering to the acceptance of a license to give adequate coverage to public issues which reflects opposing viewpoints, if necessary at the broadcaster's own expense. *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367. See also 47 U.S.C. § 315(a). As *Red Lion* makes clear, the licensee is a fiduciary with obligations to present views and voices which are representative of his community. It is through this basic ap-

[12] The dissent also mentions quality standards, an exception which is hardly consistent with its argument.

proach that the paramount right and interest of the public to be fully informed is protected. The operator of a public park or transit system has no such obligation; if the analogy offered by the dissent were valid, a broadcaster would be free to present only one side of every public issue so long as he did not reject any one who chose to speak. There would be no obligation to present the other side, let alone the obligation imposed by *Cullman Broadcasting Co.*, 25 R.R. 895 (1963) to put on an opposing view without charge. It is clear, therefore, that the analogy to other types of facilities that carry speech to the public, or furnish a place for speech, is fatally faulty.

31. Furthermore, the dissent fails to be adequately specific in detailing the types of limitation which it would permit as inroads to the general principle of an absolute right of access. Presumably, the licensee would not have to turn over all of its time on a first come, first served basis, for this would mean that the issues discussed and the persons speaking would be governed entirely by money. But even if the dissent would permit the licensee to specify amounts of time and issues, the suggested system would appear to be unsound. First of all, the individual right upon which the whole dissent is premised would largely disappear. No person would have the right to discuss an issue of his choosing, at the time of his choosing, and for a duration of his choosing. How could the licensee validly determine that a particular speaker could effectively make his argument in 10 minutes, 5 minutes or a 30-second spot? Yet such determinations would be required. We have said that a licensee may reasonably determine that a position on a complex issue should not be peddled like soap in a few seconds. The dissent would presumably upset that ruling—to what purpose? Beyond these questions is the more important difficulty that depriving the licensee of the discretion to

choose representative spokesmen on controversial public issues [13] would lead us to a first come, first served platform dominated by financial considerations—the very result the dissent seeks to avoid and something the Supreme Court has already stated to be undesirable in *Red Lion.*

32. In short, we think the present system of regarding licensees as trustees, *McIntire* v. *William Penn Broadcasting Co.*, 151 F. 2d 597 (C.A. 3, 1945), *cert. den.* 327 U.S. 779, with a duty to present contrasting viewpoints through representative spokesmen, is constitutionally sound and of greater public benefit than the concept of an individual right of access, which as we have shown has great drawbacks in the broadcast field.

Part II. The right of political parties to purchase broadcast time to solicit funds [14]

33. In view of the positions now taken by the three major networks (the only parties whose policies were singled out by DNC were CBS and ABC), no extended discussion is called for in this Part.

34. NBC has stated that it has no policy against the sale of time to a major national political party, to be used for the solicitation of funds for the party, including during non-campaign periods. CBS initially rejected the DNC request since it occurred outside an election cam-

[13] There could be a case where the licensee's policy in this area would be arbitrary (e.g., where he covers the issue, and in announcements of a few seconds duration, and then refuses to let others discuss the issue on this basis). No such case is or has been before us. We have ruled on the assertions of DNC and BEM of general entitlement to time to discuss public issues. Our holding is in that context.

[14] While the DNC petition is couched in terms of selling time to "responsible entities" to solicit funds, the petition before us is that of a political party and our discussion here is confined to purchase of time by such parties for solicitation of funds.

paign, but has now revised its policy to permit the purchase during any period by a political party of spot announcements (not to exceed one minute in length) designed to solicit funds for the party. ABC set forth its policy that "absent special public interest considerations, ABC will not sell time for comment on controversial issues or for solicitation of funds" (p. 3, ABC of June 10, 1970, to William B. Ray), but then stated:

> The continued strength and viability of our two party system are of vital importance. ABC has emphasized in recent Congressional hearings the importance of a wider base for political contributions—small sums from millions of Americans rather than large contributions from a few.
>
> * * * *
>
> Because the strength and viability of the major political parties are vitally important, ABC would be prepared, consistent with its other obligations, to accept such orders for time from major political parties as can be accommodated on a reasonable basis. At the same time, we proposed to continue our general policy against the sale of time for controversial issue programs and announcements and solicitations for funds, absent special public interest considerations.

ABC then invited the Commission to address itself to its proposed treatment of the case.

35. We concur in that treatment. We note that Congress has singled out the presentation of the political broadcast as a particularly important aspect of the licensee's public interest obligation. See Section 315(a), *Farmer's Union* v. *WDAY*, 360 U.S. 525 (1958) (citing F.C.C. cases); F.C.C. Memorandum on Second Sentence of Section 315(a), Hearing before Subcommittee of Interstate and Foreign Commerce Committee, 88th Cong., 1st Sess., on H.J. Res. 247, pp. 84-90. It also requires

no discussion to establish that political parties are an integral part of our democratic process and that it serves the public interest to promote the widest possible support by citizens of the party of their choice. See *Voters Time Rept.*, The Twentieth Century Fund (1969), pp. 45-57.

36. In a 1963 ruling, *Letter to Lawrence M. C. Smith*, 40 F.C.C. 549, we sought to encourage the presentation of free broadcast time for this purpose stating:

> First, we recognize that the announcements described by you constitute an effort to achieve the worthwhile and commendable goal of broadening the base of political contributions. The importance of this effort was recently emphasized when, on May 29, 1962, President Kennedy transmitted to the President of the Senate and the Speaker of the House of Representatives legislation designed to carry out five of the important recommendations contained in the "Report on the President's Commission on Campaign Costs." In his letter of transmittal, the President stated, among other things:
>
> "In these days when the public interest demands basic decision so essential to our security and survival, public policy should enable presidential candidates to free themselves of dependence on large contributions of those with special interest. Accordingly, it is essential to broaden the base of financial support for candidates and parties. To accomplish this, improvement of public understanding of campaign finance, coupled with a system of incentives for solicitation and giving, is necessary."
>
> Furthermore, your proposal has an objective, in common with the broad policy underlying the "fairness doctrine"—the right of the public in a free society to be fully informed as to controversial issues of public importance, including those involving political parties and candidates. See paragraph 6 of enclosed *Editorializing Report.*

> Second, the question whether to present such announcements is one for the licensee, who is faced with many competing requests to allocate time for public service announcements. The Commission of course expresses no opinion as to how that time should be allocated. But the announcements in question should not be rejected upon the sole ground that the licensee would have to be fair in their presentation. *Lawrence M. C. Smith*, 25 Pike and Fischer Radio Reg. 291, at 293 (1963).

37. Whether such time is afforded on a free basis is a matter for the judgment of the licensee. The issue here is whether the licensee may adopt or follow arbitrary policies with respect to the sale of broadcast time to significant political parties for the solicitation of funds. Thus, the prior CBS policy of confining such sales of time to election periods would appear arbitrary, since the need for the widest possible financial support for political parties is not confined to such periods; and indeed we note that CBS offered no reason for such a distinction.

38. In this connection, we note that affording time for such solicitation does not raise any offsetting considerations, because of the combined force of a number of factors:

(i) This area can be appropriately singled out, since Congress has singled it out for special attention by broadcast licensees;

(ii) This would appear particularly to be an area where the relatively short announcement, limited very largely to fund solicitations, is both effective and appropriate.[15]

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[15] Of course, the licensee may exercise judgment as to how to present these solicitations for funds, and can afford more extensive programming time, if he so chooses. Indeed, we stress again the considerable discretion of the licensee, consistent with the obligation of the fairness doctrine, as to the various facets such as number, placement, length, etc. *Cf. Lawrence M. C. Smith*, 40 FCC 549.

(iii) There is no problem under *Cullman.* For, in this regard the principles set forth in *Letter to Nicholas Zapple,* FCC 70-598 (1970), would govern.

CONCLUSION

39. In view of the foregoing, the request of the DNC and ABC for a declaratory ruling IS GRANTED to the extent reflected in Part II and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER KENNETH A. COX

I concur. The essence of the holding as to sale of time for the discussion of controversial issues—as of the *Red Lion* and *Cullman* cases—is that a broadcaster *must* devote substantial time to the presentation of news and public affairs programming dealing with the principal issues of this area. He can sell time for this purpose—subject to *Cullman*—but we will not require him to do so against his wishes. Or he can—and this is generally to be preferred—give time for both sides. I *assume* here that the networks have given, or will give, adequate time for discussion of the key partisan political issues of our time. If not, then we must hold them to that obligation.

I therefore concur generally in this action, except for the matter contained in Paragraph 27.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

[AN OPENING PARABLE]

[Once upon a time there was a nation as great in ideals as industrialization. It had business everywhere—and unsurpassed military might to protect it. And yet its greatest strength was its foundation. For this nation professed to be governed by the consent of its citizens. To insure the successful functioning of its unusual government, free education, libraries, and full information were provided in order that its 200 million governors, through wide-open debate, might govern wisely. As the years slipped by the people spent more and more time in their air conditioned homes watching television, and less and less time listening to speakers in the public parks and reading handbills on the streets. And yet the great issues, and the need for informed governors, continued. And thus it was that the great debate about the great debate began.

[Everyone had his own theory how to get the democratic dialogue back to the people (who were all home watching their television sets). Some advocated letters, petitions, press conferences, and picketing, but they didn't seem to be successful. Attention shifted to those who advocated bombing, burning, shooting and looting, because before and after the showing of such activities it was usually possible to present a short message on television (however distorted) about the merits of the issue at hand. Then a third group came along. It said, "Let us simply go to the broadcasters peacefully, and ask them for the time to present our concerns—and even pay them." They were jeered by the crowd, but not deterred. The broadcasters politely explained that there was no longer any room at their inn for the discussion of public issues—like

war, and life, and politics—because the time all had to be used for programs and announcements necessary to the very difficult but essential task of manipulating consumers to buy useless and harmful products. And yet these patient and patriotic students, businessmen, and Senators still did not give up. They continued to preach the doctrine of "working within the system." "The government," they said, "will treat us fairly. There is reason and justice in our land. Surely a democratic people need not be violent to be heard." And so it was that they came to the FCC. . . .]

The Democratic National Committee (DNC) has asked the Commission for a declaratory ruling requiring broadcasters to supply two types of "access" to their radio and television facilities: first, the right to purchase, at current commercial rates, short "spot announcements" to solicit funds for political purposes; second, the right to purchase longer segments of airtime for presentation of political programming on important national issues. The majority, so far as I can determine, has equivocated on the first request, and denied the second. I dissent.

I

We should start with a few fundamentals. The great concept of our Constitution, embodied in the First Amendment, was that our democratic government would endure only so long as its citizens and their elected representatives had the leisure to think, the right to speak, and the freedom to criticize their government. As Supreme Court Justices Holmes and Brandeis understood, "the best test of truth is the power of the thought to get itself accepted in the competition of the market," and that in a government of free men, "the deliberative forces should prevail over the arbitrary." See *Abrams* v. *United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting); *Whitney*

v. *California*, 274 U.S. 357 (1927) (Brandeis, J., concurring).

The issues we grapple with today, therefore, pose a crucial question. How can we create a free and open "marketplace of ideas" over the radio and television medium in which citizens, and their elected representatives, can discuss the great issues that weigh upon our nation?

The second fundamental is equally important. For speech to be free, there must be both a *forum* for communication—whether it be a public park, school, town hall meeting, soap box, leaflet, newspaper, magazine, or radio or television frequency—as well as *procedural rules* to keep order, to make it possible for all (or most) to speak in turn, and be heard, in that forum. Perhaps the greatest legal distinction to be drawn in political and free speech theory is that between restrictions on the *content* of speech (which the First Amendment flatly prohibits), and regulations for the manner of speech (which the First Amendment not only permits but requires). As this nation's concept of speech derives principally from the model of the town meeting, I quote Professor Alexander Meiklejohn, one of the greatest champions of First Amendment freedoms, as he describes the town meeting:

> In the town meeting the people of a community assembled to discuss and to act upon matters of public interest—roads, schools, poor houses, health, external defense, and the like . . . . The basic principle is that the freedom of speech shall be unabridged. And yet the meeting cannot even be opened unless, by common consent, speech is abridged. A chairman or moderator is, or has been, chosen. He "calls the meeting to order." And the hush which follows that call is a clear indication that restrictions upon speech have been set up. . . . [N]o one shall speak unless "recognized by the chair." Also, debators must confine their remarks to "the question before the house."

> . . . The town meeting, as it seeks for freedom of public discussion, would be wholly ineffectual unless speech were thus abridged. . . .

Meiklejohn, *The First Amendment Is An Absolute*, 1961 Supreme Court Review 245.

Although the First Amendment would clearly ban governmental censorship of speech content, government must be concerned about the procedural rules that control the public forums for discussion. If someone—a moderator, or radio-television licensee—applies rules that give one speaker, or viewpoint, less time (or none at all) to present a position, then a censorship exists as invidious as outright thought control. There is little doubt in my mind that for any given forum of speech the First Amendment *demands* rules permitting as many to speak and be heard as possible. And if this Commission does not enact them, then the courts must require them.

The analogy to broadcasting should be clear. Yet, we have permitted a system of broadcasting to develop in this country in which private licensees serve, not only as "moderators" for the electronic forums of communication, but as all the "speakers" as well. As the majority states, our limited frequencies require someone to serve as "public trustees." No one would deny this need for a "trustee" system. But that is not the issue. The issue is whether that "trustee" must control *all* the available time, or whether policy and the First Amendment require him, in a manner consistent with his other duties, to turn over reasonable portions of that time directly to the people.

In many ways, broadcasters have resolved this issue themselves. For *they* have created a system in which immediate access is granted to one, privileged class of applicants: the commercial peddler of goods and services. As the system now operates, any person wishing to sell

products—toothpaste or "feminine deodorant spray," for example—has direct, personal and instant access to television. He can present his message, in the form he wishes —not in terms of "issues" (the general benefits of toothpaste or deodorant), but in terms of individual products. He is not forced to rely upon a "trustee" to argue the cause of his product for him under some principle of the fairness doctrine—an occasional mention on the evening news, or a Sunday afternoon talk show. He does it personally and directly.

No, our Rules of Order for radio and television are fantastically skewed. We have an individual right of access, all right, but only for hucksters of industrial garbage. Anyone wishing to discuss war, peace, mental health, or the suffering of the poor, must seek out a corporate "trustee," appointed by the government, to speak for him. But the corporations that have largely contributed to these social ills can defend their wares directly. With the help of Congress and the FCC, the broadcasting industry in this country has built perhaps the most beautiful, efficient, and effective "marketplace of ideas" ever conceived and executed. The industry finds it most profitable, however, to use that marketplace only for the sale of products—not the robust, wide open debate of a free society. And the FCC finds this in "the public interest"!

II

The majority has addressed the first issue—the right to solicit funds via short announcements—in ambiguous fashion. Stating that the three networks have grudgingly announced their willingness to accept such announcements, the majority responds: "We concur in that treatment." (Par. 30.) But how does this "concurrence" rule on the request before us—namely, that broadcasters be *required* to adopt such policies? The majority hints that

a denial of such time to political parties outside normal election periods would appear "arbitrary," but does not explain why, nor detail the consequences of such arbitrariness. Because, however, the majority states that solicitation announcements are "appropriate" in this area, I conclude that they make the networks' recently adopted policies binding on them.

In a companion case to this decision, *Business Executives Move for Vietnam Peace (BEM)*, FCC 70-860, Aug. 6, 1970, I have stated in detail my position that a broadcaster cannot accept commercial advertisements, yet reject advertisements which are political in nature. I believe the principles there stated are directly applicable to advertisements soliciting funds for political parties. I will not repeat them here, but merely incorporate them by reference. For reasons detailed in that opinion, I concur in the majority's decision to require licensees to accept advertisements by political parties soliciting funds.

I dissent, however, to the majority's position that broadcasters should not be required to offer time for short announcements to *all* persons for *any* purpose. As I have argued in my *Business Executives* opinion, once a licensee opens his forum to the presentation of commercial views, he cannot then close it in a discriminatory fashion—accepting some commercial views and political solicitations, but rejecting all others. I point out only that the Commission's partial waiver for the DNC to permit it to purchase fund-raising spot announcements only increases the arbitrariness and discrimination involved in denials of access to political parties for short announcements on current issues, or announcements by groups or individuals either soliciting funds or stating positions on national problems.

In *Wirta* v. *Alameda-Contra Costa Transit District*, 434 P. 2d 982 (Cal. 1967), for example, a public transit

company sold advertising space in its buses for commercial products, but refused to accept an advertisement by Women for Peace, which simply stated:

> "Mankind must put an end to war, or War will put an end to mankind."—President John F. Kennedy . . .

Stating that the political "advertisement" was clearly protected by the First Amendment, the court flatly ordered the company to accept the advertisements for display.

> [A]dvertising is an acceptable and effective means of communication. A regulation which permits those who offer goods and services for sale . . . access to such forum, while denying it to those who desire to express other ideas and beliefs, protected by the First Amendment, cannot be upheld.

Wirta, supra, at 990. The "vice" of censorship lay in "choosing between classes of ideas," accepting commercial ones and banning all others. Every other court faced with the same issue has followed this position. See, *e.g.*, *Hillside Community Church, Inc.* v. *City of Tacoma*, 455 P. 2d 350 (Wash. 1969); *Zucker* v. *Panitz*, 299 F. Supp., 102 (S.D.N.Y. 1969); *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 328 (S.D.N.Y. 1967). The application of this arm of the law to broadcasting is relatively new and as yet undeveloped and unapplied. But see *United Broadcasting Co.* (WHKC), 10 F.C.C. 515 (1945). I have attempted to show that these cases clearly apply to broadcasting in my *Business Executives* opinion.

The lesson of these cases is clear. The Government could not, for example, allow persons selling products to speak freely in public parks, but bar those opposing the war or require them to "speak" through an interpreter

or "trustee" appointed by the Government. No court in the land would tolerate such blatant discrimination. Yet the majority permits this sort of discrimination to occur every day in our nation's electronic "public parks." Although we do not have the question before us, a broadcaster might not have to open his forum to advertising at all. But once he does, he must open it in an even-handed manner—absent some compelling showing of detriment or disruption to his normal programming services. No such evidence on this issue has been supplied to us.

I believe this Commission (perhaps for a two-year trial period) should require broadcasters to accept, up to recognized limits on numbers of commercials, *all* advertisements, whether commercial or political, from *any* person, for broadcast at rates determined by the licensee, on a first-come, first-served basis. If ghetto residents of our major cities wish to purchase announcements decrying the rat-infested, disease-ridden slums in which they are forced to live, they must be given their say. If the Daughters of the American Revolution wish to announce their support for the Vietnam War, they must be given their say. In short, I would open the broadcast spectrum to short announcements from all comers on a first-come, first-served basis. There will be time later to assess and evaluate—to consider, for example, whether the views of the rich predominate—at least, to a greater extent than they now predominate in mass media advertising. I would not expect any fairness doctrine problems. Few licensees would argue that they were unwilling to accept an advertisement because it might force them to present all views on an issue of controversy and public importance. This obligation is already incumbent upon them. And should the fairness doctrine prove unworkable in this field, it could be suspended for this type of programming.

III

The Commission also denies the DNC the right to purchase, at the going rates, half-hour or full-hour programming to discuss issues of national concern. I disagree. If broadcasters are to permit a General Motors or a Ford Motor Company, in effect, to purchase a full hour of "I Love Lucy" as a vehicle upon which to display their commercials, then I do not see how, consistent with the principles enunciated in *Wirta* and other cases, the broadcasters can refuse to permit the leading representatives of our legislative branch of government to purchase the equivalent hour to display their ideologies and concerns. I would require licensees to accept programming of a political nature, if offered, in an amount up to 5% of their prime time evening schedule on a first-come, first-served basis. Assuming four hours of prime time every evening (from 7:00 p.m. to 11:00 p.m.), and calculating 30 days per month, that would release six hours per month to "pure access" by politicians and citizens groups alike. The individual licensee would, of course, still retain the right to reject programming for inadequate technical and production quality, or violation of federal law (lotteries, obscenity, etc.). But I would assume that programming purchased by the national political parties would, almost per se, meet any pre-established quality standards. Licensee profits would remain at their present high level. And there will be time later to assess this scheme and determine the extent to which fairness doctrine obligations apply. The fairness doctrine could be suspended in this limited area, on the assumption that persons wishing to respond could purchase the necessary reply time. Obviously this 5% figure is only an initial, approximate determination, and obviously any other reasonable percentage determined by the licensee would also be approximate. But the point is that licensees could not reject *all* programming.

The majority essentially raises several objections to such a procedure. First, they argue that this would permit those with "strong financial resources" to pre-empt time and distort the presentation of issues. And they maintain that the views of the wealthy would dictate the agenda of national debate. I disagree. The short answer is that the wealthy already set the agenda for national debate, and a partial "access-for-purchase" procedure would only open a closed system to partial dissent. A longer answer, however, is simply that I have more faith in the theoretical "marketplace of ideas" than does the majority. I am not aware that opening the pages of newspapers or magazines, or the wall space of buses, train stations or subway platforms, have resulted in a preponderance of "wealthy" views. And I do know that the "political advertising" that appears in daily newspapers—urging, for example, citizens to write the President in support or opposition of the Vietnam war—is more stimulating and thought-provoking than those of department stores and food chains. All in all, I do not see any imbalance in that system of "print" access. Why should we expect it in radio and television?

But more importantly the dissemination even of "false" or one-sided political ideas often serves a socially useful purpose. False commercial ideas (such as the notion that modern cars are "safe," or do not pollute the air) are unlikely to generate opposing claims; at best, they merely goad competing manufacturers into more and more extravagant claims. On the other hand, expressions of political opinion in this country usually lead to argument and debate, not silent acquiescence; to vigorous opposition, not passive acceptance. And debate and dissent is always healthy. John Stuart Mill saw this over 100 years ago, and I do not believe the passing century has proven him wrong:

> The peculiar evil of silencing the expression of opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

J. S. Mill, *On Liberty*, quoted in *Buckley* v. *Meng*, 230 N.Y.S. 2d 924, 932 (Sup. Ct. 1962). Given a system in which the small citizen and the man of moderate means are totally cut out from a system of communication, therefore, I believe a partial access system might move a small way toward righting the present imbalance.

The majority's second justification for its position is that we have a limited number of frequencies, and that some "trustee" must necessarily exercise control over broadcasting time. Any other system would result in chaos. Again, this begs the question. Merely because a "trustee" or "gatekeeper" must control some of the time, I see no compelling reason why he must control *all* of it. Broadcasters have essentially abdicated this "trustee" authority to commercial advertisers, gobbling up sponsors as rapidly as they approach, and limiting themselves only by the commercial maximums suggested for radio and television. They have also, on occasion, sold entire hours to sponsors such as Xerox or National Geographic to present their own programming. The question before us, therefore, is whether the present system of broadcasting could function with a *partial* system of access, leaving the vast bulk of programming still under the control of the networks and individual licensees. Nothing the majority has said convinces me that this is impossible.

The third reason given by the majority is that Section 3(h) of the 1934 Communications Act prevents licensees from being treated as a "common carrier." There are many defects in this position, some of which I have dealt with in my dissenting opinion in *Business Executives*, FCC 70-860, Aug. 6, 1970. Some are as follows.

First, the legislative history of this provision suggests that the drafters of the 1934 Act were concerned only that Title II of the Act, "Common Carriers," and its rather complicated system of regulation, not be imposed on radio. No one would argue that a partial access system would have this result.

Second, Congress wrote into the 1934 Act the concept that broadcast licensees must serve the "public interest, convenience, and necessity." And it goes without saying that the basic principles of the First Amendment are also incorporated implicitly into the Act. We do not have to declare unconstitutional Section 3(h) of the Act to say that broadcasters must treat persons wishing to do business with it equally. We have ruled in our *Letter to Nicholas Zapple*, FCC 70-598 (1970), for example, that even apart from Section 315(a) considerations, there may be only one appropriate person or spokesman that can satisfy the fairness doctrine obligation imposed upon broadcasters in certain situations. Does this violate Section 3(h) of the Act, by taking from the licensee choice over the person that uses his facilities? Of course not. A limited system of access for purchase is perfectly consistent with Section 3(h) of the Act, the "public interest," and the First Amendment. Indeed, the First Amendment may require such a system or some reasonable facsimile.

Third, a reasonable system of access does not make broadcasters into common carriers. A doctrine prevent-

ing broadcasters from rejecting all persons wishing to submit political advertising or other programming does not force licensees to accept everyone. Obviously broadcasters can establish reasonable limitations on the amount of time he will offer other persons. See *United Broadcasting Co.* (WHKC), 10 F.C.C. 515 (1945). The First Amendment does not establish any particular proportion on percentage figure; it does require, however, that broadcasters devote *some* "reasonable" portion of their time to "access" programming.

IV

The matters before us go far beyond freedom of speech. For in the last analysis, we are confronted with one of the most serious challenges to the system of "checks and balances," the separation of the legislative and executive powers of government, that our country has ever faced. If, for example, through some bizarre turn of events the President, but not the Congress, was granted access to the computer, the telephone, the telegraph, the typewriter, the printing press, and the Xerox machine, we would also see a constitutional quandry of the proportions that face us now. The President has immediate, direct and vivid access to all the minds of the prime-time television viewers in America. Can our tri-partite scheme of government survive if the Congress receives substantially less?

Unlike the fairness doctrine, which often imposes a burden on broadcasters due to the importance of the *issue* to the public, principles of pure "access" pay their own way. The broadcasting industry is out-of-pocket nothing. The great mass of news, documentary and entertainment programming will be unaffected. And the forums of the air will be opened to the breeze of dissent, controversy, and thought.

Unlike the fairness doctrine, an "access" system is self-enforcing. No governmental agency is called upon to decide which issues are controversial and of public importance. Issues reach the public immediately, without the years of delay required to push a fairness doctrine controversy through the Commission and the courts.

And, unlike the present system, the views that reach the people will not be dominated by the consensus committees of the corporate television establishment. There are some who fear that the agenda of debate will be set by the rich. But who, after all, sets that agenda now? The great mass of television programming consists of format entertainment series, carefully designed as supportive and palatable packaging for the commercial content supplied by the merchandisers of our land. To the extent a network seeks to provide programming which is "offensive" to some corporate interest, then pressures for censorship are brought to bear—as Coca Cola is alleged to have pressured NBC over its recent documentary on migrant workers. All we can hope for is a system of access in which at least a small percentage of the time and views will originate directly from the people—of all views, persuasions, and walks of life. That even that modest participation is anathema to the broadcasters is testimony to their dangerous arrogance and unrestrained power. Accordingly, I dissent to today's Commission action.

IV

Relevant Pleadings Before and Orders of the Federal Communications Commission in *Business Executives' Move for Vietnam Peace*, F.C.C. 70-860

LAW OFFICES

ASHER & SCHNEIDERMAN

Thomas R. Asher
Michael Schneiderman

1320 Nineteenth Street, N.W.,
Washington, D. C. 20036
(202) 223-1491

• Not Admitted in the District of Columbia

January 22, 1970

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Ray:

This Letter of Complaint is filed on behalf of the Business Executives' Move for Vietnam Peace ("BEM"), an organization composed of over 2700 business executives and owners from 49 states (most BEM members are board chairmen or presidents). BEM also has military and diplomatic sponsors.

In June 1969 Robert Maslow, BEM's Executive Secretary, attempted to purchase air time from radio station WTOP,[1] Washington, D.C. for the purpose of broadcasting one-minute spot announcements. These announcements express opposition to the Vietnam War and particular views on aspects of the War and the policies of the United States with respect to the War. Each was produced for BEM and contains a personal statement by a military or business leader such as Rear Admiral Arnold E. True (ret.), Hon. Mariner Eccles, former Chairman of the Federal Reserve Board, or Brig. General William Wallace Ford (ret.). Each announcement closes

[1] This station bills itself as a "Post-Newsweek" station and shares common ownership with *The Washington Post* and *Newsweek* magazine as well as several other broadcasting stations.

with an invitation to listeners to send for a free copy of the speaker's complete statement on the Vietnam War.[2]

At that time, Mr. Robert Mitchell of WTOP's advertising department first told Mr. Maslow that WTOP would sell time to BEM. However, he called Mr. Maslow shortly thereafter and stated that his superiors had refused to approve the sale of time because the issue to which the announcements are directed was too controversial and because, if the announcements were broadcast, the Commission's Fairness Doctrine might require the station to give away time for the opposing point of view. BEM renewed its offer to purchase such air time in July 1969, and received no response from WTOP. On January 7, 1970, WTOP's continuing refusal to sell time to BEM for these announcements was confirmed by a letter to Mr. Maslow from Mr. Daniel E. Gold, Vice President for Business Affairs of Post-Newsweek Stations, the owner of WTOP.[3] This letter stated in part:

> "It is the policy of Post-Newsweek Stations radio stations not to sell spot announcement time to individuals or groups in order to set forth a point of view on any controversial issue of public importance."

This refusal by Post-Newsweek and WTOP violates its Constitutional and legal obligations as Licensee in the following ways:

I. *Fairness Doctrine*

WTOP is required by the Fairness Doctrine to provide BEM and its spokesmen with free air time, or, at least, to accept BEM's request to purchase such air time. Only by permitting BEM to air its views can WTOP

[2] Samples of BEM's announcements are attached.

[3] A copy of Mr. Gold's letter is attached.

comply with the legislative policy that it "afford reasonable opportunity for the discussion of conflicting views on issues of public importance." 47 U.S.C. § 315. The Vietnam War is unquestionably a controversial issue of public importance. Mr. Gold's letter concedes this fact; it is evident from the substantial amount of air time WTOP devotes to the War.

A. *WTOP's Coverage of the Vietnam War Has Not Been Balanced.* WTOP has regularly presented, through its newscasts,[4] the views of Government officials, military leaders and other supporters of the Administration's position on the Vietnam War. WTOP has not devoted, and does not now devote, a significant amount of time to presenting contrasting views on the War. There is no indication that WTOP plans to change this policy. The Fairness Doctrine requires that WTOP be required by the Commission to devote more time to airing views on the Vietnam War which contrast with the frequently broadcast viewpoints of supporters of the Administration policy. BEM's announcements responsibly state such contrasting views. Consequently, the Fairness Doctrine requires WTOP to provide BEM with free air time for presentation of them.

B. *WTOP Has Not Met its Obligation to Cover the Diversity of Contrasting Views on the Vietnam War.* WTOP has ignored the fact that views on important public issues are rarely monolithic; they usually have more than two sides. Thus, the Vietnam War has provoked a plurality of responsible views and opinions, some urging specific results for different and often conflicting reasons, and some urging very different results; one is not simply either for or against the War.

[4] Newscasts and commentaries on public events account for virtually all of WTOP's broadcasting since it is an "all news" station.

For WTOP to discharge its obligations under the Fairness Doctrine it must make a reasonable effort to air a fair sample of the contrasting views on the War. BEM, through the announcements it seeks to broadcast on WTOP, advocates views on the War which contrast with positions already presented on that station. WTOP cannot arbitrarily refuse to broadcast such views. WTOP should be required to broadcast BEM's announcements and thereby properly serve the "paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning those vital and often controversial issues which are held by the various groups which make up the community." FCC, *Applicability of the Fairness Doctrine in the Handling of Controversial Issues* of Public Importance, 29 F.R. 10415, 10422 (1964).

II. *The Public's Right to Hear*

WTOP's refusal to give or sell air time to BEM effectively frustrates the public's right to hear the views of BEM and its spokesmen. The station thus denies "the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences. . . ." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969).

The Commission has declared that a Licensee has an affirmative duty to make provision for adequate discussion of "all subjects of substantial importance to the community coming within the scope of free discussion under the First Amendment. . ." FCC Report, *Editorializing by Broadcast Licensees*, 13 FCC 1246, 1249-50 (1949). WTOP would have a duty to facilitate presentation of diverse views on the War even if it had not opened the door by extensively airing certain views on the topic.

Furthermore, WTOP cannot control access to its air time solely upon the basis of its distaste for the topics sought to be discussed. Yet, this is precisely what WTOP is doing. Its claimed policy allegedly based on the need for longer "in depth analysis" of controversial subjects of public importance is simply not WTOP's true policy. Brief spot announcements are regularly heard on WTOP on such controversial subjects of public importance as religion, the environment, the national economy, armed forces recruiting and smoking. Furthermore, WTOP presents editorials which take positions—in brief broadcasts—on many controversial issues of public importance, and invites responses by "responsible spokesmen."

Since WTOP regularly presents announcements of the type it has informed BEM it does not present as a matter of "policy", it is clear that WTOP is simply picking and choosing among topics and giving access to the air *solely* to those topics it prefers. This arbitrary restriction, based solely on the content of speech, is not permitted to a broadcast Licensee.

III. *First Amendment*

The First Amendment requires that WTOP present BEM's announcements. WTOP is licensed by the Government; it benefits from a "preferred position conferred by the Government." *Red Lion, supra*, 395 U.S. at 399. The announcements in question relate to an official Government policy. For the Licensee to refuse to carry them, and for the Government through its Federal Communications Commission to acquiesce in that decision, amounts to Government suppression of speech criticizing Government policy. "It is the purpose of the First Amendment to preserve an unhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Gov-

ernment itself or a private licensee." *Red Lion, supra*, 395 U.S. at 389.

For the reasons stated above, the Business Executives' Move for Vietnam Peace requests that the Federal Communications Commission order WTOP to broadcast, free of charge, BEM's one-minute announcements or, in the alternative, that the Commission require WTOP to sell BEM air time for the broadcasting of those announcements.

BEM further requests that processing of this Complaint be expedited to assure a prompt final decision on the issues raised. In no other way can these announcements reach the air at their most propitious time. See *Freedman* v. *Maryland*, 380 U.S. 51, 61 (1965). The Vietnam War is a current and changing issue. Each day that WTOP denies air time to BEM's announcements, BEM is denied the opportunity to broadcast its views in a timely way. Therefore, BEM respectfully requests prompt action on this Complaint.

Respectfully submitted,

/s/ Thomas R. Asher
THOMAS R. ASHER

/s/ Michael Schneiderman
MICHAEL SCHNEIDERMAN
1320 Nineteenth St., N.W.
Washington, D.C. 20036

/s/ Albert H. Kramer
ALBERT H. KRAMER
Citizens Communications Center
1816 Jefferson Place, N.W.
Washington, D.C. 20036

POST-NEWSWEEK STATIONS

Broadcast House, Washington, D.C. 20016

DANIEL E. GOLD
Vice President
Business Affairs

January 7, 1970

Mr. Robert A. Maslow
Executive Secretary
Business Executive's Move for
Vietnam Peace
201 Massachusetts Avenue, N.E.
Washington, D. C. 20002

Dear Mr. Maslow:

Per our telephone conversation of January 6th, this is to verify that it is the policy of Post-Newsweek Stations radio and television stations not to sell spot announcement time to individuals or groups in order to set forth a point of view on any controversial subject of public importance. We believe that subjects of this type require a more in depth analysis than can be provided in a 10, 20, 30, or 60 second announcement.

I appreciated the opportunity to discuss our policy on this subject with you.

Very truly yours,

/s/ Daniel E. Gold
DANIEL E. GOLD

ONE-MINUTE RADIO ANNOUNCEMENTS PRESENTED BY THE BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE

No. 1—Rear Admiral Arnold E. True, retired

ANNOUNCER: Rear Admiral Arnold E. True has an urgent message for you.

TRUE: Many people fear that if U.S. troops are withdrawn from Vietnam, there will be a resulting blood bath. The President stated that fifty thousand were killed in North Vietnam when Ho Chi Minh took over, and that three thousand more were killed by the Vietcong in Hue. He did not mention, however, that General Abrams reports that a hundred and eighty-six thousand Vietnamese have been killed by Americans this year. This policy of remaining in Vietnam indicates that we are going to prevent Vietnamese from killing Vietnamese by staying there and killing them ourselves.

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE. For your free copy of Rear Admiral True's complete statement on Vietnam, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or the station to which you are listening.

No. 2—Rear Admiral Arnold E. True, retired

ANNOUNCER: Rear Admiral Arnold E. True has an urgent message for you.

TRUE: Much is said of an honorable end to the Vietnam War. This war is morally corrupt, politically inept, and militarily stupid. Honor is involved in getting out rather than staying in. If a man falls into

a cesspool, he gets out in the most graceful and rapidest way he can. He does not stay in for honor or to save face.

ANNOUNCER: (Closing statement same as in Spot No. 1.)

No. 3—Rear Admiral Arnold E. True, retired

ANNOUNCER: Rear Admiral Arnold E. True has an urgent message for you.

TRUE: The Vietnam War is destroying the United States as well as Vietnam. The sooner it is ended, the sooner we will be able to heal the festering sores of poverty, inflation, pollution, racial tension here in our own country.

ANNOUNCER: (Closing statement same as in Spot No. 1.)

No. 4—Rear Admiral Arnold E. True, retired

ANNOUNCER: Rear Admiral Arnold E. True has an urgent message for you.

TRUE: According to the President, self-determination for the people of South Vietnam is a fundamental and non-negotiable plank in our Vietnam policy. I have talked to many non-government leaders in Saigon, and Vietnam, and they are almost unanimous in the opinion that the present Saigon government does not represent the Vietnamese people but is forced upon them by U. S. military power, and that it prevents rather than guaranteeing self-determination for the Vietnamese people.

ANNOUNCER: (Closing statement same as in Spot No. 1.)

No. 5—Rear Admiral Arnold E. True, retired

ANNOUNCER: Rear Admiral Arnold E. True has an urgent message for you.

TRUE: I believe that the Vietnamization of the Vietnam War will prolong that war as well as prolong the killing of both Americans and Vietnamese. For fifteen years we have been advising and training the Vietnamese Army and yet military experts say that nor they would probably be unable to hold their own with a 4-to-1 ratio in manpower assisted by the tremendous air power and naval power of the United States.

ANNOUNCER: (Closing statement same as in Spot No. 1.)

No. 6—Marriner S. Eccles

ANNOUNCER: The Honorable Marriner S. Eccles, former Chairman of the Federal Reserve Board, has an urgent statement for you and for President Nixon concerning the Vietnam War.

ECCLES: How can we reconcile what we are doing to South Vietnam under the guise of saving them from communism? We have killed or burned hundreds of thousands of children, countless parents, brothers, husbands and sons. No wonder the great majority of the people hate us and want us to get out of their country. We should be less interested in saving face, and more interested in saving lives.

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE. For your free copy of Mr. Eccles complete statement on Vietnam, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or the station to which you are listening.

No. 7—Marriner S. Eccles

ANNOUNCER: The Honorable Marriner S. Eccles, former Chairman of the Federal Reserve Board, has an urgent statement for you and for President Nixon concerning the Vietnam War.

ECCLES: The Vietnam War is responsible for the most serious financial problems in our country today. But the real tragedy is not financial. It is the useless suffering of millions of our people whose sons, husbands and brothers are killed and maimed for life because of our incompetent and ill-advised leadership. We should be less interested in saving face, and more interested in saving lives.

ANNOUNCER: (Closing statement same as in Spot No. 6.)

No. 8—Marriner S. Eccles

ANNOUNCER: The Honorable Marriner S. Eccles, former Chairman of the Federal Reserve Board, has an urgent statement for you and for President Nixon concerning the Vietnam War.

ECCLES: It is madness to continue our ruthless(ful) pursuit in Vietnam. To withdraw would be sanity. The consequences of withdrawal cannot possibly be as disastrous for the nation as pursuing our present course. We should be less interested in saving face, and more interested in saving lives.

ANNOUNCER: (Closing statement same as in Spot No. 6.)

No. 9—Marriner S. Eccles

ANNOUNCER: The Honorable Marriner S. Eccles, former Chairman of the Federal Reserve Board, has an urgent statement for you and for President Nixon concerning the Vietnam War.

ECCLES: What can we expect from the stricken Vietnamese nation but hatred, deep and abiding. Their husbands and sons are dead, maimed or missing, and children orphaned and grotesquely burned. No wonder the great majority of the people hate us and want us to get out of their country. We should be less interested in saving face, and more interested in saving lives.

ANNOUNCER: (Closing statement same as in Spot No. 6.)

No. 10—Dr. George Wald

ANNOUNCER: Ladies and Gentlemen: The distinguished scientist and Nobel prize winner, Dr. George Wald, has an urgent statement for you and for President Nixon about the Vietnam War.

DR. WALD: I have said at every opportunity what I think of the Vietnam war. I think it is a national disgrace. So people ask me, "Have you got a plan, do you have a program?" And so I began to say about that Vietnam War, "Yes, I have a program. I will tell you how to get out of the Vietnam War. In ships."

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE, an organization of more than 2500 of the nation's outstanding

business executives. If you would like to have a complete copy of Dr. Wald's statement, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or care of the station to which you are listening.

For free radio tapes of these spots write or call:

Robert Maslow
Business Executives Move for Vietnam Peace
201 Massachusetts Avenue, N. E.
Apartment #310
Washington, D. C. 20002
(202) 546-8552

BRIG. GEN. WILLIAM WALLACE FORD, U. S. ARMY, RETIRED

ONE-MINUTE RADIO ANNOUNCEMENTS PRESENTED BY THE BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE

No. 11—Brig. Gen. William Wallace Ford, U. S. Army, Retired

ANNOUNCER: Here's what Brigadier General William Wallace Ford, U. S. Army, Retired, has to say about the Vietnam War.

FORD: If we wish to get out of Vietnam, we should get out, and not fool around. De-escalation and Vietnamization are nothing more than devices for underwriting a continuing war. We should get out completely, in good order, on a pre-arranged schedule, and let the Vietnamese, North and South, come to terms with each other. In the end there is no other way to peace in Vietnam.

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE. For your free copy of General Ford's complete statement on Vietnam, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or the station to which you are listening.

No. 12—Brig. Gen. William Wallace Ford, U. S. Army, Retired

ANNOUNCER: Here's what Brigadier General William Wallace Ford, U. S. Army, Retired, has to say about the Vietnam War.

FORD: To say that we intend to get our "combat forces" out of Vietnam within a year or so is not really true, nor—if it were true—is it enough. Actually it is clear that we plan to leave artillery and air forces in support for as long as may be necessary. *Our neck will remain stuck out!* We are in Europe 25 years after World War II, in Korea 17 years after the end of active warfare there, and at this rate the sons of American soldiers now in Vietnam will be in Vietnam a generation hence.

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE. For your free copy of General Ford's complete statement on Vietnam, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or the station to which you are listening.

No. 13—Brig. Gen. William Wallace Ford, U. S. Army, Retired

ANNOUNCER: Here's what Brigadier General William Wallace Ford, U. S. Army, Retired, has to say about the Vietnam War.

FORD: The great American hang-up over Vietnam seems to rest upon pseudo-patriotic principles. We have never lost a war, and—right or wrong—we aren't going to lose this one. Well, there is no danger of losing it; we can't lose it, but we can't win it, either. Then we ought to *quit it.* Isn't there some theory that the American business sense knows when to turn back from a bankrupt policy?

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE. For

your free copy of General Ford's complete statement on Vietnam, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or the station to which you are listening.

No. 14—Brig. Gen. William Wallace Ford, U. S. Army, Retired

ANNOUNCER: Here's what Brigadier General William Wallace Ford, U. S. Army, Retired, has to say about the Vietnam War.

FORD: Getting out of Vietnam is only a beginning. We need to over-haul a foreign policy which has us maintaining hundreds of military installations all over the world. Vietnam has shown that we cannot be the world's policeman. In this case, we don't need all these police stations. Our bloated military budget of $75 billion ought to be cut in half, and the saving applied to urgent needs at home.

ANNOUNCER: The preceding public service message was brought to you by BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE. For your free copy of General Ford's complete statement on Vietnam, write to BEM, 901 North Howard Street, Baltimore, Maryland 21201, or the station to which you are listening.

WILLIAM WALLACE FORD

(Brigadier General, U.S. Army, Retired)

EARLY HISTORY

Born at Waverly, Virginia, October 2, 1898

Attended: Waverly High School
Virginia Polytechnic Institute
University of Virginia

MILITARY SERVICE

Enlisted in the Infantry, April 5, 1917
Served in enlisted grades through Sergeant
Appointed to United States Military Academy, June 1918
Graduated from USMA June, 1920
Commissioned in the Field Artillery and served at various stations in continental U.S. and Hawaii
Graduated from Field Artillery School and the Command and General Staff School
At outbreak of World War II was detailed to develop the training and operational techniques for a revolutionary Army concept: Organic Air Observation for Field Artillery. (This has grown into the present Army Aviation.)
Commanded the Air Training School at Fort Sill, Oklahoma, 1941-43
Commanded the 87th Division Artillery, 1944-45; combat service in Patton's Third Army: France, Luxembourg, Belgium and Germany.
Following World War II served in Continental U.S., Panama Canal Zone (3 years), France and Germany (3 years)
Retired in 1954, at the end of European Service.

MILITARY DECORATIONS

Legion of Merit (Oak Leaf Cluster)
Bronze Star Medal
Air Medal
Officer de la Legion d'Honneur (France)

POST RETIREMENT ACTIVITIES

Vice President, Aeronca Manufacturing Corp. (4 years)
Graduate study, Miami University (2 years)
University teaching (8 years), presently at U. Mass. (Mathematics)

PRINCIPAL HOBBY

Flying; has been licensed pilot 34 years; has own plane; flew the family to Yucatan, Christmas, 1967, to visit the Mayan ruins.

FAMILY

Wife —Alice Trowbridge Ford (nee Harris) of New York, graduate of Smith College

Children—3 boys, 1 girl, *all* graduates of Columbia College, where Mrs. Ford's great-great-grandfather (William Robert Harris) was an early President.

DATA ABOUT THE SPEAKERS

The Honorable MARRINER S. ECCLES, a financier and business executive with wide interest and experience in business and government. He is Chairman of the First Security Corporation of Salt Lake City, Utah and of the Utah Construction and Mining Company. He was Chairman of the Board of Governors of the Federal Reserve System from 1936 to 1948 and a member of the Commission on Money and Credit from 1958 to 1961. He is a trustee of the American Assembly of Columbia University and a member of the National Committee on United States-China Relations.

Rear Admiral ARNOLD E. TRUE, United States Navy, Retired, has served in the United States Asiatic Fleet in the Far East, commanded the USS Hammann and two Destroyers in World War II and was on the Staff of the Commander-In-Chief of the United States Atlantic Fleet between 1944 and 1946. He has received many decorations. During the Battle of Midway he sustained injuries which necessitated his retirement in 1946. Since then, he has been Professor of Meteorology at San Jose State College.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN. 26, 1970

IN REPLY REFER TO:

8330-F1A
Cl-1178

Post-Newsweek Stations
Station WTOP
Broadcast House
Washington, D. C. 20016

In re: Complaint of Asher & Schneiderman
Dated January 22, 1970
Against Station WTOP

Gentlemen:

Enclosed is a copy of a complaint sent to the Commission concerning the operation of your station.

The Commission has no independent information concerning this complaint and has made no determination in the matter. In light of the fairness doctrine relating to the treatment of controversial issues of public importance, and in order to assist it in obtaining further information, the Commission requests that you submit your comments, in duplicate, on the complaint within ten days of the date of this letter, and that you furnish a copy of your response to the complainant.

If the complainant wishes to reply to your response, the reply should be submitted in duplicate within seven days of the date complainant receives your response. In order to expedite consideration of this complaint, it is suggested that you and the complainant furnish each other

with copies of all further correspondence sent to the Commission.

Sincerely yours,

WILLIAM B. RAY, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau

cc: Ernest W. Jennes, Esq.
Asher & Schneiderman
(Attorneys for Business
Executives' Move for
Vietnam Peace)

Letter of February 5, 1970

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POST-NEWSWEEK STATIONS
Broadcast House, Washington, D.C. 20016

LARRY H. ISRAEL
Chairman of the Board

February 5, 1970

Mr. William B. Ray
Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: 8330-F1A
C1-1178

Dear Mr. Ray:

This letter is written in response to the complaint of the Business Executives Move for Vietnam Peace (BEM) dated January 22, 1970, regarding WTOP's refusal to sell time to BEM for spot announcements which included expressions of opposition to the Vietnam war and views regarding the war and related policies of the United States.

WTOP has long had a policy of not accepting spot announcements dealing with controversial issues, a policy which the Federal Communications Commission has found not to violate the Fairness Doctrine or otherwise be inconsistent with law on at least two occasions. *Letter to Washington Women's Strike For Peace,* November 22, 1965; *Letter to Joseph A. Beirne, President, Communications Workers of America,* March 8, 1968.

BEM's discussion of what occurred in the latter part of June, 1969, requires amplification. When Mr. Maslow called the station to inquire about the purchase of time, he was referred to Mr. Robert Mitchell, then a salesman who had been employed by WTOP for less than one month. Mitchell, unaware of the station's established policy, went

to Maslow's office where the details of a purchase of time were discussed. However, when he returned to the station with the BEM copy to prepare a contract for the announcements, WTOP's general sales manager informed him of the station's policy.

Mitchell attempted to reach Maslow that day and was unable to do so, but shortly thereafter did get in touch with him and informed him that the station could not carry the spots.

BEM states that it renewed its offer to purchase spots in July, 1969, and received no response. This may be so but Mr. Mitchell does not recall any such request and there are no station records of further contact with BEM or Maslow until sometime in January, 1970, when BEM requested an explanation in writing of the station's earlier rejection and received the letter from Mr. Daniel E. Gold which is attached to the BEM complaint.

I. *WTOP's Treatment of the Vietnam Issue.*

BEM's general allegation that the station has not provided balanced coverage of the Vietnam war and specifically that it has not afforded a fair amount of time to the opponents of the war or to views differing from the present Administration's policy on Vietnam is not only wholly unsupported by facts but is also the kind of charge which does not fulfill the requirements of specificity which the Commission has repeatedly required to establish unfairness. Moreover, the fact is that WTOP has scrupulously tried to provide balanced coverage of this important issue in its hard news coverage, in news interviews, in commentary and otherwise. WTOP's all-news and information format has enabled it to cover all major statements on this issue by President Nixon and various supporters of Administration policy and also to present views

which contrast with those of the Administration in a manner wholly consistent with the Fairness Doctrine.

A complete quantitative evaluation of the coverage of any station, let alone an all-news and information station, of as long-continuing an issue as the Vietnam war and President Nixon's policy with respect to that war would be virtually impossible as a practical matter. However, WTOP has made a spot check of materials available with respect to broadcasts during the three months April-June, 1969, covering the period before and immediately after BEM's request to purchase spot announcements. This check shows that the station's news reports included not only the views of Administration spokesmen and reports of Presidential statements and actions regarding Vietnam but also, on numerous occasions, the views of a variety of Administration critics on the subject. Furthermore, during this period the station provided a large amount of hard news coverage of events in Vietnam and relating to Vietnam which of course has enabled the public to develop its own views regarding the war. During this three month period WTOP also aired the views of four regular station commentators who reflected varying viewpoints with respect to Administration policies and actions in Vietnam—Carl Rowan, Drew Pearson, Rod MacLeish, and James J. Kilpatrick.

WTOP's handling of three recent events also reflected the fairness of its approach to this matter. The station extensively covered the Moratorium activities in both October and November, doing so by way of hard news, coverage of numerous press conferences and meetings of groups opposing and supporting the war, and extensive coverage of the rallies and demonstrations themselves. For example, among anti-war groups covered were the Vietnam Moratorium Committee, the D.C. Moratorium Committee and the New Mobilization Committee to End the War in Viet-

nam. Among pro-administration groups were Americans for Peace with Freedom, the Freedom Rally Committee, and the Young Americans for Freedom.

WTOP's handling of President Nixon's November 3, 1969, major policy speech on Vietnam is very much in point. After the speech the station presented comments by five leaders generally supporting the President's position—Senators Goldwater, Scott, and Tower and Representatives McCormick and Ford—and six leading critics of the President's policy, men whose own views on war policy presented numerous contrasts as well—Senators McGovern, Gore, Goodell, Mansfield, Aiken, and Percy.

In addition to programming such as the foregoing, WTOP regularly broadcasts *Face the Nation* and *Capitol Cloakroom*—two CBS Network news interview programs on which national leaders are interviewed on a variety of current issues. These two programs have consistently provided opportunities both for supporters and opponents of the President's policy on and actions with regard to Vietnam to voice contrasting views.

With issues as intense and controversial as Vietnam it is not suprising that particular groups may feel that their own views have not been adequately reflected, despite the good faith efforts of the station. However, it is ironic that this complaint of favoritism toward President Nixon's policies in Vietnam would be made against WTOP in view of the allegations of Allen C. Phelps last fall in connection with a complaint against the station that it had been unfair *against* the President's policy in Vietnam— a charge as baseless as the present one and found to be baseless by the Commission in its letter of November 25, 1969.

II. *WTOP's Policy Concerning Spots on Controversial Issues.*

WTOP's policy not to carry spot announcements on the merits of controversial issues is clearly a matter within its responsibility as a licensee. The Commission has often made clear that, so long as a station makes a good faith effort to present contrasting views on an issue, it has no obligation to present the views of any particular spokesman or group, whether it be through free or sponsored material, or in any particular manner. Moreover, WTOP's policy was specifically approved at least twice by the Commission. In a letter to Washington Women's Strike for Peace dated November 22, 1965, concerning the refusal of several Washington stations, including WTOP, to sell paid spot announcements concerning the war in Vietnam, the Commission held that:

> "With respect to the refusal of the station to sell time for spot announcements, under the Communications Act, the selection and presentation of broadcast material are the responsibilities of the individual station licensees, and Section 326 of the Act expressly prohibits the exercise of censorship powers by the Commission . . . .
>
> "Thus, the Act makes it clear that the Commission has no power to require a broadcaster to carry or refrain from carrying any particular program, or to prescribe the content of any program presented over the air. Moreover, Section 3 (h) of the Act provides that '. . . a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.' In *McIntire* v. *Wm. Penn Broadcasting Company*, 151 F. 2nd 597, the U.S. Court of Appeals, Third Circuit, stated, in part, that:
>
> > '. . . As we have indicated, a radio broadcasting station is not a public utility in the sense that

it must permit broadcasting by whoever comes to its microphone.'

"In view of the foregoing, it does not appear that Commission action concerning radio station WTOP is warranted in this instance."

A similar refusal as recently as 1968 was upheld by the Commission in a letter to the Communications Workers of America, dated March 8, 1968.

WTOP's policy against the carriage of spot announcements on controversial issues is based in part on its proper desire to determine, in the exercise of its professional journalistic judgment, the way in which its fairness obligation is discharged on controversial issues. As Mr. Gold's letter to BEM stated, it is the licensee's belief that short spot announcements are not an appropriate medimum to bring before its listeners views on the merits of controversial issues. The actual substantive portion of the BEM spots in question here, for example, is extremely short—ranging from about 20 seconds to 35 seconds by actual timing. By constrast, the commentaries and editorials aired by the station are usually approximately two minutes in duration, and do provide enough time for develpoment of position. Likewise, the station presents longer news interviews on both sides of this issue—running as much as one-half hour—and numerous shorter statements and interviews in the course of its regular news coverage. WTOP feels that in this way constructive dialogue takes place.

III. *Alleged Discriminatory Application of the Station's Policy.*

The BEM complaint charges in effect that WTOP's policy is not consistently applied. The naked assertion on page four of the BEM complaint that: "Brief spot announce-

ments are regularly heard on WTOP on such controversial subjects of public importance as religion, the environment, the national economy, armed forces recruiting and smoking," however, falls far short of supporting, let alone proving, the charge. Any of the myriad types of free public service announcements on a wide range of activities in the community and nation can be thought by some to invoke the Fairness Doctrine—witness the recent question raised in the District of Columbia over public service announcements, supporting the United Givers Fund. Such announcements, however, do not deal with controversial issues of public importance on the merits. Is BEM asking the FCC to rule that an announcement suggesting that people go to the church of their choice raises a fairness issue, when it has declined to give atheists time because stations broadcast religious services? The BEM complaint mentions, but does not elaborate upon, announcements concerning "the environment" and "the national economy." Is BEM suggesting that "Smokey the Bear" and "Keep America Beautiful" announcements advocate positions on controversial issues? Recruiting spots have long been broadcast by nearly all stations, and have never been considered as invoking the Fairness Doctrine. They do not relate to the Vietnam war or take any position on any public issue.[1] As for announcements concerning "smoking," WTOP does not carry cigarette advertising.

It does carry anti-smoking spot announcements in the interest of public health and welfare as it carries consumer reports to help protect the public from fraudulent or deceptive business practices.

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[1] In its letter to Tibor R. Machan of June 12, 1968, the Commission found reasonable a licensee's determination that similar public service announcements—for the Job Corps, the Peace Corps, VISTA and U.S. Savings Bonds—did not raise controversial issues of public importance.

It should be emphasized that BEM is not requesting time to reply to a specific station editorial, nor is it alleging that it was the subject of a "personal attack." It is merely asserting a right to purchase spot announcements to air its views on a controversial issue of public importance regardless of the station's judgment as to how such an issue is most appropriately covered and even though it has not shown that the station does not adequately cover contrasting views on this issue in its programming. Such a view is simply out of line with the Commission's long-standing interpretations of the Fairness Doctrine. Moreover, we are advised by our counsel that, contrary to the argument in BEM's complaint, the First Amendment does not require WTOP to present these announcements and the *Red Lion* case does not apply in these circumstances.

Respectfully submitted,

/s/ Larry H. Israel
LARRY H. ISRAEL
President, Post-Newsweek
Stations, Capital Area, Inc.

cc: Asher & Schneiderman
Attorneys for Complainant

LAW OFFICES
ASHER & SCHNEIDERMAN

Thomas R. Asher
Michael Schneiderman

1320 Nineteenth Street, N. W.,
Washington, D. C. 20036
(202) 223-1491

• Not Admitted in the District of Columbia

February 16, 1970

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Ray:

On January 22, 1970, Business Executives Move for Vietnam Peace ("BEM") filed a Letter of Complaint with you concerning refusal of radio station WTOP to broadcast its spot announcements expressing opposition to the Vietnam War. On February 5, 1970, WTOP filed its response; the response was received by BEM on February 9, 1970. This letter is a reply to WTOP's response.

I. *The Public's Right to Hear*

WTOP's response is drafted solely in traditional Fairness Doctrine terms and fails to confront the critical claim in BEM's Complaint. It ignores the public's right to hear BEM's announcements, and BEM's right to broadcast them regardless of whether WTOP had already broadcast views on the Vietnam War. WTOP further ignores the fact that these rights of access are especially applicable to a radio station whose all news format makes it a peculiarly appropriate medium for communicating information and ideas.

The public's right of access derives from the reasoning in *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367

(1969), and recent authority interpreting the first amendment such as *New York Times* v. *Sullivan*, 376 U.S. 254 (1964). WTOP in declining to address these substantial issues and citing solely advice of counsel, would have the Commission disregard the substantial developments in both broadcast law and first amendment law in recent years.

WTOP's response merely copies the standard Commission form letters used to reject Fairness Doctrine complaints, which rely upon § 326 of the Communications Act, § 3(h) of that Act, and *McIntire* v. *Wm. Penn Broadcasting Co.*, 151 F.2d 597 (3d Cir. 1945). These three chestnuts are regularly relied upon in the Commission's letters. See, e.g., *Letter to Washington Women's Strike for Peace*, November 22, 1965; *Letter to Joseph A. Beirne, President, Communications Workers of America*, March 8, 1968; *Letter to Stanley Fleishman*, February 12, 1969; *Letter to A. F. Grospiron, President, Oil, Chemical and Atomic Workers International Union*, June 6, 1969. WTOP's response is mere parrotting of those F.C.C. letters.

However, the law has undergone much change since the Commission began relying on *McIntire*. The public today, in contrast to 1945, has a clearly established right of access to broadcast and hear editorial advertisements on commercial radio and television stations.

> The editorial advertisement [is an] important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. *New York Times* v. *Sullivan*, 376 U.S. 266 (1964).

As the law has progressively broadened the public's right to communicate via the mass media, it necessarily

has narrowed the reliance which the Commission can rightly place on such precedents as *McIntire* and § 3(h) for the proposition that what a licensee chooses to broadcast is purely the licensee's business. Whatever those authorities may once have meant by declaring that a licensee was not a "common carrier" or a "public utility", they plainly do not today mean that public access to the air waves is a right to be defined by the whims and prejudices of broadcasters. The 1959 amendment to § 315 of the Communications Act, and the legislative history behind it reviewed in *Red Lion*, makes this clear. "The argument that a broadcaster is not a public utility is beside the point. . ." *United Church of Christ*, 359 F.2d 994, 1003 (D.C. Cir. 1966). These obligations may not make WTOP a "common carrier" in the sense that its rates may be regulated or its programming content prescribed by the Commission.[1] However, these obligations to the public do require that WTOP give access to its airtime to persons wishing to express views to the public, especially when those persons are willing to pay WTOP at its going rate.[2]

These obligations to the public, although owed by all licensees, are peculiarly applicable where a broadcaster postures itself as a communicator of information and ideas. A station that holds itself out as the Twentieth Century's equivalent of the town public bulletin board or the town crier cannot censor ideas. WTOP, as an "all news" station, has an obligation which may exceed the obligation of other radio stations to provide the public with a ready means to broadcast editorial advertisements; c.f. *New York Times, supra.*

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[1] Thus, the § 326 prohibition against "censorship".

[2] BEM does not contest WTOP's right to deny access for such technical reasons as lack of available advertising time or mechanical defects in the announcements.

Nor can the Commission ignore, as WTOP has, the fact that WTOP is a government licensee and, as such, has special obligations under the first amendment. BEM's announcements relate to official government policy. WTOP's suppression of them, with government approval, offends the first amendment as much as if the government, itself, had engaged in direct censorship.[3]

The right claimed here by BEM, for itself and the public, derives from the same principle which spawned the Fairness Doctrine. But it is not a right which can be quashed by the sort of simple Fairness Doctrine response which WTOP has filed. The Commission must look to the laws and their interpretation by the U.S. Courts, not to the advice of WTOP's counsel, to determine its legal obligations.

II. *WTOP's Irrational "Policy" is Arbitrarily Applied*

BEM's announcements were rejected solely on the basis of WTOP's "policy" that controversial subjects of public importance "require a more in-depth analysis than can be provided in a 10, 20, 30, or 60-second announcement." [4] Yet, WTOP does not adhere to its own rule.

WTOP congratulates itself for carrying anti-smoking announcements (WTOP Response, p. 7). If the asserted "more than one minute" rule were, in fact, WTOP's policy, these announcements would be banned, just as BEM's have been banned. The anti-smoking announcements deal with a controversial subject of public importance; the Commission has so held. *Television Station WCBS-TV*, 8 F. C. C. 2d 381, 382 (1967). These announce-

[3] Cf. *Amalgamated Food Employees Union* v. *Logan Valley Plaza*, 391 U.S. 308 (1968); *Marsh* v. *Alabama*, 326 U.S.

[4] See Letter to Robert Maslow from Daniel E. Gold, January 7, 1970, attached to BEM's Complaint.

ments are 60 seconds or less in length. Yet WTOP regularly carries them.

WTOP also congratulates itself for extensive "all news" coverage. Its "news" broadcasts carry countless statements of position on controversial subjects of public importance which occupy segments of 60 seconds or less. Even the news panel programs carried by WTOP frequently contain short statements by the guest on controversially important subjects which are less than 60 seconds in length. While WTOP's editorials are indeed often two minutes long, a substantial portion of this time is sometimes consumed in stating the underlying facts. The actual statement of position in such editorials consumes substantially less than two minutes. Therefore, its own editorials violate the station's policy.[5]

WTOP'S policy is not only unevenly applied, it is irrational on its face. It takes no account of the varying complexity of issues, of the particular viewpoint expressed, or of the manner of presentation. It is sufficiently irrational that it can be entirely avoided by a simple decree that a subject is "noncontroversial". An announcement entirely adequate one day would not have sufficient "in-depth analysis" the next if, overnight, WTOP discovered controversy about it.[6]

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[5] A statement of the facts on the Vietnam War is, in contrast, not necessary. These facts are *known*.

[6] WTOP's classification of announcements recruiting young men to serve in the armed forces is a good example. Today it is classed by WTOP as "noncontroversial" (WTOP Response, p. 6), and therefore 60-second announcements have sufficient depth to be acceptable to WTOP. But WTOP may be wrong. It surely is wrong in light of the widespread public dissent and debate over military recruiting and service. If WTOP someday discovers the controversy, the 60-second recruiting announcements will no longer adequately discuss their subject.

Upon legal and factual analysis, WTOP's "policy" evaporates with two consequences: (1) WTOP's counsel and the Commission must directly confront BEM's right to access; and (2) WTOP must acknowledge that it asserts a naked right to control access to its air. Even if such a right existed, it could not be applied discriminatorily, favoring some speakers and silencing others solely on the basis of the views they wish to express.

III. *Fairness Doctrine*

BEM has spelled out a clear violation of the Fairness Doctrine. It has specifically identified the views which it wishes to answer: the views of the administration, the military and their supporters on the Vietnam War. WTOP, in its response to BEM's Complaint, admits that these views have been presented in depth and lists other speakers whose views have been presented. But it does not claim to have broadcast BEM's views.

BEM states that its particular views in opposition to the administration's policy—the special views of businessmen and military leaders—have not been presented on WTOP. Of course, BEM cannot *prove* the negative, for it is WTOP which has the program logs and other material necessary to do so. However, WTOP has cited no evidence and made no response to the claim.

The War has more than two sides. The examples of views which WTOP has aired (WTOP Response pp. 2-3) prove this. The Fairness Doctrine is not satisfied by presentation of a limited number of sometimes only slightly differing positions on this War. BEM claims the right, under Commission Doctrine, to broadcast its views on the War in answer to the views of the administration, the military, and others already broadcast on WTOP.

If WTOP's unfairness is not found to be evident from the letters now on file with the Commission, additional

evidence must be obtained from WTOP. Remaining questions of fact in this area can be resolved fairly only if BEM is permitted to inspect WTOP's program logs and relevant additional materials. The Commission should not resolve the Fairness Doctrine question against BEM without first ordering such discovery.

* * * *

BEM seeks enforcement of its right to broadcast editorial advertisements on WTOP, and of the concomitant right of the public to hear those advertisements. These rights, although based on the principles which require the Fairness Doctrine, exist independent of that Doctrine. Access to WTOP for BEM's announcements must, therefore, be guaranteed. The fact that WTOP has not complied with the Fairness Doctrine is an additional ground for relief.

Respectfully submitted,

/s/ Thomas R. Asher
THOMAS R. ASHER

/s/ Michael Schneiderman
MICHAEL SCHNEIDERMAN
1320 Nineteenth St., N.W.
Washington, D.C. 20036

/s/ Albert H. Kramer
ALBERT H. KRAMER
Citizens Communications Center
1816 Jefferson Place, N.W.
Washington, D.C. 20036

cc: Larry H. Israel
President, Post-Newsweek
Stations, Capital Area, Inc.

February 19, 1970

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Attention: Milton O. Gross, Esq.
Re: 8330-F1A
C1-1178

Dear Mr. Gross:

On behalf of Business Executives Move for Vietnam Peace ("BEM"), we request that the above matter be referred directly to the Commission.

The questions raised by BEM's Complaint involve basic Commission policy on a matter of great public importance which eventually must be ruled upon by the Commission and the Courts. If the Complaints and Compliance Division refuses the relief which BEM seeks, BEM will request review by the full Commission and, if turned down by the Commission, BEM will seek judicial relief. Therefore, in order to avoid delay, we respectfully request that the Complaints and Compliance Division forward this matter to the full Commission for initial disposition at that level.

We further request that the Commission rule upon BEM's Complaint within three weeks. Expedited treatment is particularly appropriate in a case such as this: with every day BEM is barred from WTOP's air waves, it and the public suffer irrevocable loss.

Yours sincerely,

THOMAS R. ASHER

cc: Mr. Larry H. Israel
President, Post-Newsweek Stations
Capital Area, Inc.

Ernest W. Jennes, Esq.
Covington & Burling

COVINGTON & BURLING
888 Sixteenth Street, N.W.
Washington, D.C. 20006

John Lord O'Brian
Newell W. Ellison
H. Thomas Austern
Howard C. Westwood
Charles A. Horsky
Hugh B. Cox
J. Harry Covington
W. Crosby Roper, Jr.
James H. McGlothlin
Ernest W. Jennes
Stanley L. Temko
James C. McKay
John W. Douglas
Hamilton Carothers
J. Randolph Wilson
Roberts B. Owen
Edgar F. Czarra, Jr.
William H. Allen
David B. Isbell
John B. Jones, Jr.
H. Edward Dunkelberger, Jr.
Brice McAdoo Clagett
John S. Koch
Peter Barton Hutt
Herbert Dym

Dean G. Acheson
John G. Laylin
Fontaine C. Bradley
Edward Burling, Jr.
Joel Barlow
Donald Hiss
John T. Sapienza
Nestor S. Foley
Daniel M. Gribbon
Harry L. Shniderman
Don V. Harris, Jr.
William Stanley, Jr.
Weaver W. Dunnan
Edwin M. Zimmerman
Jerome Ackerman
Henry P. Sailer
John H. Schafer
Alfred H. Moses
John Lemoyne Ellicott
David E. McGiffert
Philip R. Stansbury
Charles A. Miller
Richard A. Brady
Robert E. O'Malley
Eugene I. Lambert

Telephone: (202) 293-3300
Teletype: (202) 965-0673
Cable: Covling

February 24, 1970

Mr. William B. Ray, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: 8330-F1A
C1-1178

Dear Mr. Ray:

This letter is written on behalf of WTOP in response to the request of Business Executives Move for Vietnam

Peace (BEM), dated February 19, 1970, for immediate reference to the Commission of its pending complaint against WTOP.

WTOP takes no position on the question whether the Complaints and Compliance Division should follow its normal procedures in this case or refer this matter directly to the Commission. The fact that the express purpose of BEM is to seek judicial review, however, should be irrelevant to the orderly disposition of this matter.

As to the suggestion that BEM has suffered or will suffer irrevocable loss as a result of its inability to broadcast its short spot announcements over WTOP, the following should be noted. First, BEM asked to buy time from WTOP for such announcements in June, 1969, and apparently did not decide to lay the base for a judicial appeal by filing a formal complaint with the Commission until some seven months later, in January, 1970. Second, in addition to WTOP, there are 6 AM and 11 FM radio stations licensed to Washington, D.C., and an additional 17 AM and 8 FM stations licensed to other communities in the metropolitan area and serving Washington. According to a story appearing in the Washington *Star* on February 17, 1970, BEM's spot announcements have been accepted by five area stations—WDON, WQMR, WGAY, WHFS and WGTV—and rejected by two others in addition to WTOP—WRC and WWDC. Accordingly, it is rather difficult to see how the failure of the organization to purchase time for its short announcements on WTOP is an "irrevocable loss" to BEM, let alone to the public—the latter especially in view of the fact that varying facets of the Vietnam matter have frequently been aired over WTOP and other local and area stations.

In view of certain points made in BEM's reply of February 16, 1970, it is our intention to submit to the Commission an additional statement regarding this mat-

ter, which, barring unforeseen circumstances, will be filed on February 27, 1970.

Any questions with respect to this matter should be directed to the undersigned.

Respectfully submitted,

ERNEST W. JENNES

Attorney for
Post-Newsweek Stations,
Capital Area, Inc.

cc. Milton O. Gross, Esq.
Asher & Schneiderman
Attorneys for Complainant

February 26, 1970

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: 8330-F1A
C1-1178

Dear Mr. Ray:

By letter, dated February 24, 1970, WTOP has informed you of its intent to file an extraordinary response to BEM's reply. The Business Executives Move for Vietnam Peace (BEM) objects to the filing of additional letters in this matter by WTOP.

WTOP's proposed filing is a bald attempt to further delay these proceedings. BEM raised no new issues in its reply; the discussion of the legal and constitutional right of access merely develops points in BEM's complaint which WTOP and its counsel chose to disregard in their reply. WTOP has apparently changed its mind and now seeks to disrupt and delay these proceedings by filing another document which may, in turn, require BEM to file an additional reply.

WTOP files even this unauthorized document late. Whereas, under your letter of January 26, 1970, BEM was limited to seven days to respond to WTOP's answer, WTOP arrogates to itself eleven days to make its extraordinary filing. Furthermore, it is difficult to see why WTOP waited until more than one full week after the filing of BEM's reply to notify the Commision—and BEM—of its intent to file an extraordinary document, unless it was an attempt to preclude an effective objection by BEM.

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Any questions with respect to this matter should be directed to the undersigned.

Respectfully submitted,

ERNEST W. JENNES

Attorney for
Post-Newsweek Stations,
Capital Area, Inc.

cc. Milton O. Gross, Esq.
Asher & Schneiderman
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February 26, 1970

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: 8330-F1A
C1-1178

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WTOP effronts the Commission's procedures to seek delay. If its proposed letter is accepted for filing by the Commission, WTOP will achieve its objective. Such tactics by a licensee and its counsel should be condemned and WTOP's forthcoming letter should be rejected by the Commission.

Respectfully submitted,

THOMAS R. ASHER

MICHAEL SCHNEIDERMAN
1320 Nineteenth Street, N.W.
Washington, D.C. 20036

ALBERT H. KRAMER
Citizens Communications Center
1816 Jefferson Place, N.W.
Washington, D.C. 20036

cc: Larry H. Israel
President
Post-Newsweek Stations
Capital Area, Inc

COVINGTON & BURLING

Telephone
(202) 293-3300

Teletype: (202) 965-0673
Cable: COVLING

February 27, 1970

Mr. William B. Ray, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: 8330-FIA
C1-1178

Dear Mr. Ray:

WTOP's response to the complaint of Business Executives Move for Vietnam Peace (BEM) did not rely exclusively on "traditional" Fairness Doctrine arguments, as alleged by BEM. WTOP showed that it has gone far beyond its Fairness Doctrine responsibilities which require that if a station presents a point of view on a controversial issue of public importance, it must present contrasting views. WTOP has devoted substantial time to the Vietnam issue using its news judgment as to how this coverage should be handled. In so doing, it has sought out and broadcast a wide spectrum of views on the Vietnam issue. Accordingly, WTOP cannot be found derelict in meeting its public service responsibilities, which it recognizes wholly apart from any requirement of law. Surely it was not enough for BEM—as it did in its February 16, 1970, letter to you (hereinafter BEM Reply)—merely to repeat its assertion that WTOP's cov-

erage of the Vietnam issue has not been balanced and to call for an investigation.[1]

But BEM has really shifted the main burden of its argument, or perhaps its reply has articulated its position more clearly. BEM's counsel have abandoned, as they must, their naked allegation that WTOP has been unfair in the treatment of the Vietnam issue although they reiterate their early wholly unsupported rhetoric that WTOP is "favoring some speakers and silencing others on the basis of the views they wish to express." BEM Reply, p. 5. BEM's reply now makes clear that it is *not* primarily concerned with the *right of the public to hear* a balanced spectrum of views on Vietnam, but rather with *its own alleged right, as an organization,* to use WTOP's facilities to speak on Vietnam, regardless of whether the views it wants to express have already been expressed in WTOP's news, information and public affairs programming (BEM Reply, p. 1). The 20-35 second[1] "sample" statements on Vietnam that BEM wanted aired in its name are attached to the complaint. The FCC will see that these views or attitudes or assertions are among the most common and repeated objections to United States policy in Vietnam. *They are not different or contrasting views.* Thus, BEM's position emerged as a novel and profoundly disturbing one which, because of its far-reaching implications, warrants further comment.

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[1] BEM says that if it has not shown that WTOP has been unfair additional evidence must be obtained from WTOP and has volunteered to inspect relevant additional materials. BEM Reply, p. 5. In the last year alone WTOP has broadcast some 8,400 hours of news and information programming. BEM cannot seriously suggest that its flimsy allegations warrant an investigation of the tapes of WTOP's programs by it and ultimately by the FCC.

[1] See letter, Israel to Ray, February 5, 1970, p. 5, for length of "substantive portions."

I.

BEM would have the Commission declare that where any controversial issue of public importance is concerned broadcast stations must provide time to any interested group to express its view on that issue, regardless of whether the view has already been expressed over the station by others or by the station itself in its programming.

(1) Any such doctrine would be wholly impractical and impose an impossible burden on broadcast stations, to say nothing of the suffering public. Consider, for example, the number and variety of groups which could insist on expressing their views on the Vietnam issue alone (and BEM's position applies to every controversial issue of public importance)—the American Legion, the Students for a Democratic Society, United We Stand, the Youth International Party (Yippies), the John Birch Society, the Ripon Society, the Southern Christian Leadership Conference, SANE, the Veterans of Foreign Wars, the New Mobilization Committee to End the War in Vietnam, the Daughters of the American Revolution, the Americans for Democratic Action, the National Council of Churches, the Fleet Reserve Association, the Navy League and the Air Force Association, to name only a few. Moreover, on issues such as Vietnam and other important public issues there are literally innumerable ad hoc organizations (like BEM itself) that come into being to attempt to influence public opinion or government policy or both.

Consider further the number of such burning issues about which organizations or individuals want to speak, and the indiscriminate sweep of the doctrine advanced by BEM becomes even more appalling. Moreover, this complaint was filed against WTOP, although five other Washington area stations accepted BEM spot announce-

ments and two (WRC and WWDC) rejected them.[1] Thus, the question is not even one of access to *some* broadcast station—*each* organization should have an enforceable right to speak on each station! The only limitation would be the size of the group's pocketbook. In the Washington metropolitan area alone, this would involve 43 different AM and FM radio stations! In the United States as a whole there are about 4,300 AM, 850 TV and 2,500 FM stations. Just where does the BEM doctrine stop?

(2) Such a policy would hardly serve the public. It would require the broadcast of duplicative views and indeed, in view of the expansive definition of a controversial issue of public importance in BEM's two letters to the Commission,[2] even views on trivial issues. Moreover, it would encourage the sort of "hard-sell" approach to public issues which is least likely to contribute to public understanding.

(3) Such an approach would impede a fair and balanced presentation of public issues. In contrast to what is contemplated by the Fairness Doctrine, the expression of views would become dominated by wealthy and powerful groups or individuals. If both could purchase time up to the limits of their financial capacity, which would be heard more often on the Vietnam issue, the voice of an organization with little money or one with unlimited financial resources? Should exposure of viewpoints on a public issue be subject to an auction with the greatest exposure going to the groups willing and able to spend the most? WTOP thinks not. Today the broadcaster exercises his professional judgment, subject to the Fairness Doctrine, to ensure that such inequities do not occur.

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[1] *Evening Star*, February 17, 1970, p. C-4.

[2] BEM Complaint, January 22, 1970, p. 4; BEM Reply, p. 4.

(4) Finally, the broadcaster's freedom of the press—to judge the importance of issues and to determine how to present them to the public—would be abridged by such a doctrine. Efforts of stations like WTOP, which broadcasts only news, information and public affairs programs, to present issues to the public in a fair, balanced and understandable way would be totally disrupted by a cacaphony of redundant views paid for by a variety of groups and individuals with axes to grind. Broadcast journalism could not perform its vital function in such a context.

II.

Under the Communications Act, as consistently interpreted by the Commission and the courts, it is the licensee's responsibility to operate in the public interest. The broadcaster is not a common carrier. Proposals to the contrary have been specifically rejected by the FCC and the Congress, especially as to public issues. The licensee is expected to treat public issues of concern to his listeners and to provide a reasonable opportunity for contrasting views on the issues to be heard. This obligation has traditionally, and correctly, been interpreted as *issue-oriented.* That is, it is the right of the public to *receive* fair and balanced presentation of the issues, *not* the right of any particular person or group to *express its view,* which is paramount. The Commission made these points crystal clear in its classic formulation of the Fairness Doctrine—the 1949 Report on Editorialization by Broadcast Licensees:

> "Congress has recognized that the requests for radio time may far exceed the amount of time reasonably available for distribution by broadcasters. It provided, therefore, in Section 3(h) of the Communications Act that a person engaged in radio broadcasting shall not be deemed a common carrier." 13 FCC 1246, 1247 (1949).

The Commission went on to say:

> It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public *to broadcast his own particular views on any matter*, which is the foundation stone of the American system of broadcasting." *Id.* at 1249 (emphasis added).
>
> * * * *
>
> "The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as whether the subject is worth considering, *whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time*, or whether there may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person making the request." *Id.* at 1251-52 (emphasis added).

BEM thus seeks to shift the historic focus of the Commission's Fairness Doctrine, and of the First Amendment, from the issue or idea being expressed to the identity of the speaker.

III.

What legal support is offered for the proposition that BEM, as such, has a right to be heard? BEM asserts that its new doctrine is supported by recent cases interpreting the First Amendment.[1]

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[1] BEM's citation of *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), for the proposition that the First Amendment demands

Red Lion Broadcasting Co. v. *FCC*, 395 U.S. 367 (1969), far from supporting a common-carrier approach, supports the Commission's view of the licensee's responsibility, and WTOP's position that it is not BEM's right to broadcast but the public's right to know that is crucial. Nowhere did the Court state that an advocate of a view on a public issue has a right to express it on a broadcast station. On the contrary, it recognized the traditional responsibility of the broadcaster to ensure through the exercise of his professional judgment that contrasting views are presented.

> "To condition the granting or renewal of licenses on a willingness to present *representative* community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgement of freedom of speech and freedom of the press." *Id.* at 394 (emphasis added).

Indeed, in distinguishing between the general fairness obligation, from which the personal attack and candidate endorsement policies and rules under attack were derived, and these *particular* policies and rules themselves, the Court noted:

> "These obligations differ from the general fairness requirement that issues be presented, and presented with coverage of competing views, in that the broad-

---

an absolute right of access for all groups or individuals is puzzling. That case dealt only with the question whether, absent actual malice, the *voluntary* publication by a newspaper of an advertisement containing defamatory material concerning a public official was libelous. The issue was not the legal *right* of the group whose names were on this advertisement to insist that a newspaper publish the material; that question was not even involved in the case. The Court's comment quoted on page 2 of the BEM Reply was part of its discussion of the question whether the defamatory statements lost First Amendment protection because they were in an advertisement.

> caster does not have the option of presenting the attacked party's side himself or choosing a third party to represent that side." *Id.* at 378.

It is in this connection and in this connection only that the Supreme Court said:

> "There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves." *Id.* at 389.

The Court expressly recognized that the Congress had not imposed common-carrier status on broadcast licensees (*Id.* at 390-91) and that the only obligations to allow *particular* persons to broadcast over a station (other than the Section 315 political broadcast equal time requirement) were imposed in connection with personal attacks and political editorials—not at issue here.

The Court's concern was *not* over the access of individuals or groups *to speak*, but the right of the public at large to have access *to ideas* through broadcasting.

> "It is the right of the public to receive suitable *access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.*" *Id.* at 390 (emphasis added).

BEM argues further that WTOP's rejection of its announcements (or presumably the announcements of any other group or person) even though fair and reasonable, becomes an offensive act of censorship under the First Amendment if the FCC finds that WTOP's action was not inconsistent with the Fairness Doctrine. We submit that BEM's use of the words "with Government approval" in this connection (BEM Reply, p. 3) is an exercise in

semantics which does not create a First Amendment issue or right where one would not otherwise exist. The FCC's regulatory power in this area is limited to a determination whether the broadcaster has acted in good faith and has been fair. It has nothing to do with what official Government policy happens to be. The citation by BEM of the *Marsh* and *Logan Valley Plaza* cases is wholly inapposite. There the questions were whether private ownership of property used for public purposes affected the First Amendment rights to distribute religious literature and to engage in informational picketing which the persons involved in those activities admittedly would have had if the property had been publicly owned. The Supreme Court in *Red Lion* did not hold that a privately owned, licensed station has the attributes of a public street, which was the case of the company town in *Marsh* and the shopping center in *Logan Valley*. It recognized that protection of First Amendment rights in broadcasting is accomplished by the responsibility of broadcasters to treat public issues and to do so consistent with the Fairness Doctrine.

The late Professor Meiklejohn expressed the fundamental point well, when he said that "What is essential is not that everyone shall speak, but that everything worth saying shall be said." [1] The Commission's Fairness Doctrine, fully implemented by WTOP in this instance, furthers that crucial end.

IV.

One other point raised by BEM's reply warrants brief comment. BEM argues for the first time that WTOP's news and information format is a further reason why it be required to sell time to BEM. Surely the conclu-

[1] A. Meiklejohn, Political Freedom: The Constitutional Powers of the People, 25 (1960).

sion is exactly the opposite. BEM's conception of the station's programming as "the town public bulletin board or the town crier" (Reply, p. 3) wholly misconceives the programming, purpose and role of the station. WTOP provides a news service interspersed with information features, interviews on public issues, and similar programming. This is a journalistically professional presentation of local, regional, national and international issues. Given the great multiplicity of views presented through such a format, it would seem that WTOP would be the last station upon which would be imposed a special requirement that *particular* spokesmen or organizations be heard.

V.

BEM's request for a far-reaching change in broadcaster responsibilities should be denied. If it is not denied, the Commission will recognize that because of its enormous implications and application it should not even be seriously considered except after a broad inquiry, with full opportunity of all broadcasters and all other interested persons and groups to express their views and submit pertinent information.

Respectfully submitted,

ERNEST W. JENNES
JOHN C. ROBERTS
Attorneys for WTOP

CC: Asher & Schneiderman (By Messenger)
Attorneys for Complainant
Albert H. Kramer, Esq. (By Mail)
Milton O. Gross, Esq.

COVINGTON & BURLING

Telephone
(202) 293-3300

Teletype: (202) 965-0673
Cable: COVLING

February 27, 1970

Mr. William B. Ray, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: 8330-F1A
C1-1178

Dear Mr. Ray:

WTOP, by its counsel, feels constrained to reply to the letter from BEM's counsel to the Commission dated February 26, 1970, in view of both the letter's tone and its substance. BEM is apparently unaware that in dealing with letter complaints of this nature, technical procedural rules regarding the timing or number of pleadings have not generally been followed by the Commission. This is not a pernicious practice but rather one that has served the interests of the public, the Commission, complainants and those complained against. The materials which may be submitted in such matters have long been governed by the need to place relevant facts and pertinent arguments before the members of the Commission's charged with making initial evaluation of the complaint. Indeed, where time is of the essence inquiries by Commission staff of both sides for information may be even be made by telephone or telegram to permit expedited action.

Counsel for WTOP obtained a copy of BEM's reply dated Monday, February 16, 1970, from the offices of

BEM's counsel on Wednesday, February 18. Noting that BEM had shifted the main burden of its complaint to a ground either not in its initial letter or not clearly articulated in it—a right of access regardless of station coverage of the issue—and that at least one new issue had been presented—an alleged special obligation of an all-news and information station—WTOP's counsel saw that further comment on this matter might be necessary. WTOP's counsel communicated with your office to determine whether processing of the matter would be delayed by a further letter, and was told it would not if filed by February 27. On Monday of this week, February 23, which was a government holiday, the undersigned received BEM's letter dated February 19, 1970, requesting immediate Commission consideration of its complaint. On the next day (which was the first working day) we filed a letter in reply to the request, stating also that, in view of certain points made in BEM's February 16 letter, we intended to submit an additional statement on February 27. This was only six days after receipt of BEM's reply, and the next business day (in view of the holiday—February 23) after it was decided to file a further statement, on February 20.

WTOP is as anxious as BEM for speedy resolution of its letter complaint. But surely if BEM could wait seven months to file that letter complaint after its request was rejected, it can now allow adequate time for the development of facts and arguments in this matter, and to allow the members of the Commission's staff expert in such questions to consider them under their normal procedures.

A further letter on this matter dealing with points made in BEM's letter of February 16, is being filed together herewith. It will be noted that this is but 6 working days since undersigned counsel obtained a copy of BEM's letter from BEM's counsel—hardly a "disruption" of FCC pro-

cedures, a "delaying" tactic or otherwise warranting the *ad hominem* language in counsel's letter of February 26, if, indeed, such language is ever warranted.

Respectfully submitted,

ERNEST W. JENNES
JOHN C. ROBERTS
Attorneys for WTOP

cc: Asher & Schneiderman (By Messenger)
Attorneys for Complainant
Albert H. Kramer, Esq. (By Mail)
Milton O. Gross, Esq.

March 6, 1970

Re: 8330-F1A
C1-1178

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Ray:

The Business Executives Move for Vietnam Peace ("BEM") regrets the necessity to file still another letter in this matter. However, the improper second response of WTOP leaves BEM little choice. We shall restrict this letter to several brief points.

1. WTOP claims the unfettered power to arbitrarily bar editorial advertisements on controversial issues of public importance. BEM simply claims that a licensee of the public's airwaves cannot be permitted this power to foreclose a form of expression which the Supreme Court has found to be "an important outlet for the promulation of ideas and information." *New York Times* v. *Sullivan*, 376 U.S. 254, 296 (1964).

2. Section 315 of the Communications Act, *New York Times*, and *Red Lion Broadcasting Co.* v. *FCC* 195 U.S. 357 (1969) establish the public's right to have a mass media which is available for statements of position on important issues. It is no answer to these recent cases to rely on statements of Commission policy issued more than 20 years ago. WTOP's attempt to distinguish *Red Lion* and *New York Times* on their facts cannot obscure the substantial right which they define. Whatever the precise

boundaries of that right, the public cannot be consigned to hearing only the views of spokesmen and editors chosen by the licensee.[1]

3. WTOP devotes more than half of its second response to a supposed distinction between the public's right to hear issues and BEM's right to present its views. WTOP maintains that it alone should decide what issues the public shall hear and what spokesman shall present varying views on those issues. WTOP then claims the power to bar any other persons wishing to speak to its audience. This is censorship and, in this case, censorship of criticism of the Government under whose license WTOP operates.[2]

4. WTOP worries that, if stations must sell air time for issue-oriented advertisements, editorial advertising will be dominated by wealthy speakers. But this is what commercial broadcasting is all about; he who can afford it buys time, be it for commercial, political, or other purposes. Even under the Fairness Doctrine, response time goes to the highest bidder, since licensees are free to select those advocates of contrasting viewpoints who are

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[1] The relevance of the principle in *New York Times* upon which BEM relies has been recognized by the Commission. *In the Matter of Broadcasting of Information Concerning Lotteries*, FCC 70-210 (March 2, 1970) p. 5.

[2] As licensee of the Government, WTOP has the same obligation to avoid denying Constitutional rights as if it were an agent of the Government; see *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

able to pay. See *Letter to Cullman Broadcasting Co.*, FCC 63-849 (Sep. 18, 1963).

Respectfully submitted,

THOMAS R. ASHER

MICHAEL SCHNEIDERMAN
1320 Nineteenth Street, N.W.
Washington, D.C. 20036
(202-223-1491)

ALBERT H. KRAMER
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1816 Jefferson Place, N.W.
Washington, D.C. 20036

cc: Larry H. Israel
Ernest W. Jennes

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

March 31, 1970

In Reply Refer To:
8330
Cl-1178

In re: Complaint of Business Executives Move for Vietnam Peace against Station WTOP

Ernest W. Jennes, Esq.
Covington & Burling
701 Union Trust Bldg.
Washington, D.C. 20005

Dear Mr. Jennes:

We have considered the material submitted in connection with the above complaint. Before resolving the matter, we believe that it would be helpful if one aspect were clarified, namely, whether Station WTOP has presented the viewpoints embodied in the complainant's announcements (obviously by other than the complainants). In order not to delay this matter further and since what is sought is only this one clarification, your response should be submitted by April 7, and served upon the complainant on that day. The complainant may reply, if it desires, by April 14; the matter thereafter will be promptly presented to the Commission for resolution.

Sincerely yours,

/s/ William B. Ray
WILLIAM B. RAY, CHIEF
Complaints and Compliance Division for Chief, Broadcast Bureau

cc: Asher & Schneiderman

COVINGTON & BURLING
888 Sixteenth Street, N.W.
Washington, D.C. 20006

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James H. McGlothlin
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William H. Allen
David B. Isbell
John B. Jones, Jr.
H. Edward Dunkelberger, Jr.
Brice McAdoo Clagett
John S. Koch
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Herbert Dym

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April 3, 1970

Mr. William B. Ray, Chief
Complaints and Compliance Division
for Chief, Broadcast Bureau
Federal Communications Commission
1919 H Street, N.W.
Washington, D.C. 20554

Re: 8330
C1-1178

Dear Mr. Ray:

Submitted herewith on behalf of Post-Newsweek Stations, Capital Area, Inc., licensee of standard broadcast station WTOP, Washington, D.C., is the affidavit of an

official of the licensee in response to your request for clarification dated March 31, 1970, relating to the complaint of Business Executives Move for Vietnam Peace (BEM) against station WTOP.

Any questions with respect to this matter should be directed to the undersigned.

Respectfully submitted,

Ernest W. Jennes

Attorney for Post-Newsweek Stations, Capital Area, Inc.

Enclosure
cc: Asher & Schneiderman (with enclosure—by hand)

AFFIDAVIT OF JAMES L. SNYDER

WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

James L. Snyder, being first duly sworn, deposes and says:

1. I have been Executive Editor of WTOP Radio since January, 1969. My position entails general supervision of and responsibility for the news and information programming of WTOP. Prior to my employment by Post-Newsweek Stations I was Washington Producer for the CBS Evening News and earlier was Chief of the Westinghouse Broadcasting Company's Washington Bureau.

2. I have examined the spot announcements proposed to be broadcast over WTOP by Business Executives Move for Vietnam Peace (BEM) and attached to a letter from BEM's counsel to the Federal Communications Commission dated January 22, 1970. Based upon my daily supervision and general direction of the news gathering operations and the presentation of news and information by station WTOP since March, 1969, I am able to state of my own knowledge that each of the viewpoints embodied in the BEM announcement has been expressed on a number of occasions in various types of broadcasts over WTOP by critics of the Vietnam War other than the complainants.

/s/ James L. Snyder
JAMES L. SNYDER

SUBSCRIBED AND SWORN to before me, a Notary Public, this 3rd day of April, 1970.

(SEAL) /s/ [Illegible]
Notary Public
My commission expires April 30, 1972

April 7, 1970

Mr. William B. Ray
Chief, Complaints and Compliance Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C.

Re: 8330-F1A
C1-1178

Dear Mr. Ray:

Business Executives Move for Vietnam Peace ("BEM") has reviewed your letter of March 31, 1970, addressed to WTOP seeking clarification, and WTOP's filing of April 8, 1970, which purports to respond. WTOP has supplied no new or clarifying information. The affidavit simply restates broadly what WTOP has already made clear: it thinks it has already presented BEM's views. BEM has already responded to this conclusory claim. In the absence of a contribution of new facts by WTOP, BEM makes no further response at this time.

Respectfully submitted,

THOMAS R. ASHER

MICHAEL SCHNEIDERMAN
1320 Nineteenth Street, N.W.
Washington, D.C. 20036
202-223-1491

bcc: Al Kramer
Bob Maslow

ALBERT H. KRAMER
Citizens Communication Center
1816 Jefferson Place, N.W.
Washington, D.C. 20036

cc: Ernest W. Jennes, Esq.
Covington & Burling

LAW OFFICES

ASHER & SCHNEIDERMAN

Thomas R. Asher
Michael Schneiderman

1320 Nineteenth Street, N. W.,
Washington, D. C. 20036
(202) 223-1491

June 10, 1970

Re: 8330-F1A
C1-1178

The Honorable Dean Burch
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Chairman:

Business Executives Move for Vietnam Peace ("BEM") requests that the Commission rule immediately on its Complaint against radio station WTOP. The Complaint was filed on January 22, 1970, and has been pending before the Commission for several months, despite requests by Complainant for expedited treatment.

Time is of the essence in this Complaint seeking access to the air for presentation of editorial advertisements. In view of the currency of the issues involved, the lapse of even days, much less months, is critical. Unless the Commission acts rapidly on such complaints, First Amendment rights are negated and the Fairness Doctrine is em-

asculated. By its continued inaction, the Commission forecloses the legal and constitutional rights of the public to hear and of spokesmen like BEM to be heard.

Expeditious administrative processing is peculiarly important where First Amendment rights are at stake. See *Freedman* v. *Maryland*, 380 U.S. 51, 61 (1965). Complainants ought not to have to wait indefinitely for a ruling, See *Environmental Defense Fund, Inc.* v. *Hardin*, —— F.2d —— (D.C. Cir. May 28, 1970); *Kessler* v. *FCC*, 326 F.2d 673, 684 (D.C. Cir. 1963); *American Broadcasting Co.* v. *FCC*, 191 F.2d 492 (D.C. Cir. 1951).

The Commission currently has before it a Request for Declaratory Ruling by a political organization which also raises right of access questions. However, prompt ruling on BEM's Complaint, on which both parties have fully presented the relevant legal arguments, need not await disposition of other matters currently before the Commission. BEM's Complaint, dealing as it does with the right of the general public to reach the air, as opposed to a major association of politicians who have constant access to the air for their views, plainly raises fundamental public interest considerations.

BEM respectfully requests prompt resolution of its Complaint by the Commission.

Respectfully submitted,

THOMAS R. ASHER

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ALBERT H. KRAMER
Citizens Communications Center
1816 Jefferson Place, N.W.
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cc: The Honorable Robert T. Bartley
The Honorable Robert E. Lee
The Honorable Kenneth A. Cox
The Honorable Nicholas Johnson
The Honorable H. Rex Lee
The Honorable Robert Wells
William B. Ray, Esq.
Ernest W. Jennes, Esq.
Joseph A. Califano, Jr., Esq.

F.C.C. 70-860

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Re Complaint by
BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE
Concerning Fairness Doctrine Re Station WTOP,
Washington, D.C.

August 5, 1970

BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE,
c/o Asher & Schneiderman,
1320 19th Street NW,
Washington, D.C.

GENTLEMEN: This is with reference to your complaint dated January 22, 1970, against the licensee of Standard Broadcast Station WTOP, Washington, D.C., and to statements subsequently submitted by you and the licensee.[1]

From information before us it appears that the complainant, Business Executives Move For Vietnam Peace Organization (hereinafter called BEM), a national organization of more than 2700 business owners and executives sought, in June 1969, to purchase time on WTOP for the purpose of broadcasting one-minute announcements urging immediate withdrawal of American forces

[1] Pleadings before the Commission include: Complaint filed by BEM on January 22, 1970; letter of response filed by Post-Newsweek Stations (WTOP) on February 5, 1970; letter of reply filed by BEM on February 16, 1970; letter requesting Commission action filed by BEM on February 24, 1970; letter filed by WTOP on February 24, 1970; letter filed by BEM on February 26, 1970, and response of WTOP filed February 27, 1970; letter filed by WTOP on February 27, 1970; letter filed by BEM on March 10, 1970; letter filed by WTOP on April 3, 1970; and letter filed by BEM on April 15, 1970.

from Vietnam and from other overseas military installations. While there is some indication that the complainant was informally given a favorable response, WTOP declined to sell time. BEM renewed its request in July, 1969 and again in January, 1970 with the same negative result. The licensee cited its long established policy of refusing to sell spot announcement time to individuals or groups to set forth views on controversial issues and stated that "subjects of this type require a more in-depth analysis than can be provided in a 10, 20, 30 or 60 second announcement."

Complainant's initial request to the station made no reference to the fairness doctrine and after being turned down in its attempts to purchase time, complainant made no further demands upon the licensee in terms of fairness doctrine, i.e. that the station in its coverage of the Vietnam issue present views similar to those expressed in BEM's statements. Complainant now alleges, however, that in refusing to sell or to provide free time for the announcements, the licensee has violated the fairness doctrine, infringed on the public's right to hear contrasting views such as those contained in BEM's announcements, and violated the First Amendment to the Constitution by suppressing free speech. Therefore, complainant contends, the Commission should order the licensee to present its announcements, either free of charge, or, in the alternative, at commercial rates. In response, the licensee denies complainant's charges and asserts that it has complied fully with all relevant statutes and Commission rules and policies. We shall deal first with the fairness aspect of the complaint. Normally, fairness complaints arise as a result of unsuccessful negotiations between the complainant and the station licensee. The Commission has developed procedures for the filing of a complaint under the fairness doctrine in the following manner:

> . . . The Commission expects a complainant to submit specific information indicating (1) the particular station involved; (2) the particular issue of a controversial nature discussed over the air; (3) the date and time when the program was carried; (4) the basis for the claim that the station has presented only one side of the question; and (5) whether the station had afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints.[5] [2]

[5] The complainant can usually obtain this information by communicating with the station.

In short, by the time a complaint under the fairness doctrine reaches the Commission, the parties (both the complainant and the station) will have had an opportunity to fully crystallize their positions and delineate their areas of agreement and disagreement.

In the case before us, BEM initially made a request to purchase air time for the presentation of a number of spot announcements dealing with United States presence in Vietnam. The same request was made on at least three occasions with the variation that if WTOP would not sell time for this purpose, that it should provide it free of charge. The pleadings before us do not indicate that at any time BEM sought station coverage of views similar to those urged in its spot announcements by WTOP in its program coverage of the Vietnam War.

Consequently, while we will consider the complaint of BEM in its entirety, we believe the issue would have been immeasurably sharpened if the procedures set forth above had been observed.

[2] *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29, Fed. Reg. 10415, 10416.

BEM states that the Vietnamese war is unquestionably a controversial issue of public importance; that although WTOP has regularly presented the views of government officials and others supporting the Administration's position, it has not devoted a significant amount of time to contrasting views; that the war has provoked a wide diversity of responsible views, rather than merely views on "two sides;" that BEM advocates views in contrast to those already broadcast;[3] and that only by permitting BEM to air its views can WTOP comply with the legislative policy that it "afford reasonable opportunity for the discussion of conflicting views on issues of public importance."[4]

In response, the licensee states that it has tried to provide balanced coverage of the Vietnam war issue in news reports, news interviews, commentary and statements by both supporters and opponents of the Administration policy. It cites extensive coverage of Moratorium activities last fall, including press conferences, meetings and rallies of numerous anti-war groups, and its handling of the President's speech of November 3, 1969, following which it presented five leaders generally supporting the President's position and six leading critics of his policy.

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[3] A review of BEM's announcements reveals that the following views are expressed: (1) that the bloodshed which may result from United States withdrawal from Vietnam does not compare with the bloodshed presently going on in Vietnam; (2) that the United States should not remain in Vietnam, because the war is morally corrupt, politically inept, and militarily stupid; (3) that the war is destroying the United States internally; (4) that the South Vietnamese government does not represent the people; (5) that "Vietnamization" of the war will prolong the war; (6) that the United States should try to save lives by withdrawing and not try to "save face;" (7) that the war is a "national disgrace;" (8) that our withdrawal must be total; (9) that remaining in Vietnam is based on a pseudo-patriotic principle; and (10) that the United States needs to overhaul its entire foreign policy.

[4] 47. U.S.C. § 315.

It states that it has broadcast the diverse views of its own commentators (Carl Rowan, Drew Pearson, Rod MacLeish and James J. Kilpatrick) and also carries the CBS programs, "Face the Nation" and "Capitol Cloakroom," which it states have provided opportunity for national leaders to present views both for and against the President's policy. WTOP alleges that BEM's complaint lacks the specificity which the Commision requires to establish unfairness, and states that "A complete quantitative evaluation of the coverage of any station, let alone an all-news and information station [WTOP], of as long-continuing an issue as the Vietnam War and President Nixon's policy with respect to that war would be virtually impossible as a practical matter." However, it states that a spot check of the three-month period, April-June 1969, reveals that its news reports and other programs included the views of a variety of Administration critics on the war on numerous occasions. The licensee has submitted an affidavit by the Executive Editor of WTOP Radio, stating that "of my own knowledge . . . each of the viewpoints embodied in the BEM announcements has been expressed on a number of occasions in various types of broadcast over WTOP . . . ."

The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of significant contrasting viewpoints on the issue in its overall programming, which may include news programs, interviews, discussion, debates, speeches and the like. No particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual or group to present personal views. As we stated in our *Report In the Matter of Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949):

> In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as whether the subject is worth considering, whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time, or whether there may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person (or group) making the request.

In the present case, because of the multiplicity of spokesmen available to express views on the Vietnam war, it is obvious that a licensee must exercise its judgment in choosing appropriate spokesmen to insure an orderly and effective presentation of the many conflicting views. The question, then, is whether a licensee has exercised reasonable, good faith judgment in applying the fairness doctrine to a particular issue or issues.

In the letter to *Mrs. Madalyn Murray*, 40 FCC, 647, 5 RR 2d 268 (1965), we stated:

> A licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation . . . as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all other facets of such programming. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith.

On the basis of BEM's complaint and the licensee's response, we are unable to find that the licensee acted other than reasonably and in good faith in refusing to make time available for the broadcast of BEM's announcements. On the one hand, we have the licensee's

assertion that it has presented a wide variety of views on the Vietnamese war, including those embodied in the proposed announcements. The licensee has cited a number of specific instances in which it has presented views opposed to further American participation in the conflict. On the other hand, we have no more than a general allegation that WTOP has failed to present significant contrasting views on the subjects covered in the announcements. As we stated with regard to similar vague allegations in our letter of November 25, 1969, to *Allen C. Phelps and the Federation of Citizens Associations of the District of Columbia*, 21 FCC 2d 12, where it was charged that this same licensee had presented only the "liberal" viewpoint on a number of issues such as racial discrimination:[5]

> Absent detailed and specific evidence of failure to comply with the requirements of the fairness doctrine, it would be unreasonable to require licensees specifically to disprove allegations such as those made here. The Commission's policy of encouraging robust, wide-open debate on issues of public importance would in practice be defeated if, on the basis of vague and general charges of unfairness, we should impose upon licensees the burden of proving the contrary by producing recordings or transcripts of all news programs, editorials, commentaries and discussion of public issues, many of which are treated over long periods of time. Accordingly, although the Commission intends also to employ other appropriate procedures to insure compliance by licensees with the fairness doctrine (e.g., in-depth spot checks

[5] The *Phelps* complaint charged that WTOP's violation of the fairness doctrine was manifest by one-sided coverage of issues such as "liberal v. conservative" political philosophy, coverage of the Nixon administration, hostility toward the South, problems of the District of Columbia including crime, race relations, law and order and the station's attitude toward mass demonstrations.

at renewal time), it has long been our policy normally to require that fairness doctrine complaints (a) specify the particular broadcasts in which the controversial issue was presented, (b) state the position advocated in such broadcasts, and (c) set forth reasonable grounds for concluding that the licensee in his overall programming has not attempted to present opposing views on the issue. See *Applicability of Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10415 (1964).

In short, where, as here, the complainant has made only a general allegation and the licensee has answered by affidavit that it has presented such viewpoints on numerous occasions, pointing also to example coverage of the Vietnam war, it is not unreasonable that the burden be placed on the complainant to come forward with some indication why a more detailed showing should be required—why it is he believes that the licensee has been unfair. Here the complainant has wholly failed to do so. We stress that we are not requiring complainants in this area to prove their case ahead of time. To place any undue burdens on such complainants would be inconsistent with the public interest since the Commission does depend for purposes of enforcement to a large extent on complaints in this area. However, the complainant must have some basis for his complaint that a licensee has been unfair and that basis can and should be set forth (e.g., several days monitoring of news or public affairs programming, with the assertion that only one viewpoint is presented). For, just as an undue burden should not be placed upon complainants, so also it is inappropriate to place such a burden on the licensee. A complainant cannot simply say the word, "Vietnam", "racial discrimination", "pollution", and require a licensee to devote extensive man-hours to cull over his past pro-

gramming to show fairness on general issues of this nature. This would be particularly burdensome to smaller stations, and would not be a policy promoting "robust, wide-open debate". Cf. *The New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964). In sum, as a public trustee, the licensee must shoulder certain burdens, including upon an appropriate complaint the burden of showing that he has complied with the fairness doctrine, but based on our experience we find that the public interest also requires some reasonable specificity in a complaint to trigger this detailed showing by the licensee. There is no such specificity in this case, just as there was none in the *Phelps* case.

Before passing to the next particular of the complaint, we take cognizance of BEM's contention that licensee's policy of refusal to sell time for the broadcast of spot announcements dealing with controversial issues violates the fairness doctrine and amounts to "picking and choosing among topics so as to give exposure only to those which it prefers." It states that WTOP does broadcast announcements "on such controversial subjects of public importance as religion, the environment, the national economy, armed forces recruiting and smoking," and that it presents brief editorials taking positions on controversial issues. WTOP replies that it does not believe that the public service announcements it carries involve controversial issues of public importance; that it does not broadcast cigarette advertising, and that it believes that the anti-smoking announcements which it carries are in the interest of public health and welfare, comparable to consumer reports "to help protect the public from fraudulent or deceptive business practices." It states that its editorials are two minutes in length and "provide enough time for development of position," whereas, it asserts, "The actual substantive portion of the BEM spots [ranges] from about 20 seconds to 35 seconds . . .".

We find no reason to reverse our prior ruling in *Women's Strike for Peace* that the WTOP policy in question does not *per se* violate the fairness doctrine or any other Commission policy.[6] Citing Section 3(h) of the Communications Act of 1934, as amended,[7] we pointed out in that ruling that a broadcasting station is not a common carrier under the Act and therefore is not required to open its doors to all persons seeking to use the station's facilities for whatever purpose. As we stated in our letter to *Mrs. Madalyn Murray*, *supra*, it is within the licensee's judgment to determine the format for presentation of controversial issues "and all other facets of such programming." The licensee here as asserted, without rebuttal other than the unsupported assertions of complainant, that it has presented contrasting views, including the viewpoints embodied in complainant's announcements on the recited issues, and we find no reason to require that it present in addition the views of any particular group or in any particular format. We need not develop this point further, in view of the extensive treatment given the legal and policy consideration in the DNC ruling, Part I, issued this day, FCC 70-——. We rely here on those considerations.

In the second part of its complaint, BEM asserts that WTOP has frustrated the public's right to hear the views of BEM and thus has denied "the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences . . . ."—citing *Red Lion Broadcasting Co., Inc.* v. *Federal Communications Commission*, 395 U.S. 367, 390 (1969). However, as we noted above, the licensee has furnished or tendered evi-

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[6] Letter to *Washington Women's Strike for Peace*, November 22, 1965.

[7] Section 3(h) of the Act provides, in pertinent part, that "a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

dence that it has provided suitable access to the public on the ideas which BEM wishes to express, and it is clear that in this passage the Supreme Court was stressing the essential nature of the fairness doctrine, rather than the right of a particular spokesman to obtain access to the air, except in cases of personal attack and editorials endorsing or opposing political candidates. The Court stated:

> To condition the granting or renewal of licenses on a willingness to present *representative* community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgement of freedom of speech and freedom of press. *Id.* at 394 (emphasis added).

And in distinguishing between the general fairness obligation and the special obligations imposed in the case of a personal attack or a candidate endorsement, the Court noted that,

> These obligations differ from the general fairness requirement that issues be presented and presented with coverage of competing views, in that the broadcaster does not have the option of presenting the attacked party's side himself or choosing a third party to present that side. *Id.* at 378.

Inasmuch as WTOP appears to have presented "representative community views" on the issues here in question, we find that it has not acted contrary to the principles laid down in *Red Lion.* See discussion in *DNC* ruling, *supra.*

Finally, BEM argues that the Commission would be violating the First Amendment rights of BEM's spokesmen by sanctioning the licensee's policy of refusing to sell BEM time. Complainant relies principally upon the *Red Lion* decision. We do not believe that the Court's

decision supports complainant's conclusion. As noted above, the Communications Act specifically provides that a broadcaster shall not be deemed a common carrier, and thus he may exercise his judgment as to the particular program matter he will present. The licensee is thus constantly called upon to make choices between types and formats of programming and the persons to participate therein. If the licensee were required to present any matter brought to him which was not obscene, etc., the result would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt. *DNC* ruling, *supra.*

Based on the foregoing, we cannot find that the licensee of WTOP acted unreasonably or in bad faith with respect to the fairness doctrine, nor do we believe that its conduct was inconsistent with the principles laid down by the Supreme Court in *Red Lion* or infringed the First Amendment rights of BEM's spokesmen. Accordingly, the complainant's request for relief is denied.

Commissioner Bartley concurring in the result; Commissioner Cox concurring and issuing a statement; Commissioner Johnson dissenting and issuing a statement.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER KENNETH A. COX

I concur in this action because BEM has not made an adequate showing that its members' views have not been reasonably reflected in matter broadcast by WTOP. It is implicit in this ruling, of course, that if the station had not devoted reasonable time to the issues involved in the Vietnam War—including the positions espoused by BEM —it could have been required to do so. But that marks the

extent of its obligation to the public in this regard. To require more would pose serious problems for the continued health of our broadcast system and would clearly discourage the full and effective practice of broadcast journalism. The fact that BEM is willing, if need be, to pay for time to broadcast its views does not alter this. In the first place, if stations were required to carry all spots dealing with controversial issues for which time was ordered, this might occupy much of the time which can be devoted to nonprogram matter and could, in time, impair the effectiveness of the broadcast media for advertising purposes. Furthermore, although BEM is willing to pay, our ruling in *Letter to Cullman Broadcasting Co., Inc.*, FCC 63-849, would subject any station carrying its messages to the risk that those holding contrary views might claim free time for reply. I fully support the *Cullman* doctrine in those cases where broadcasters elect to accept sponsored controversial issue programming or paid spots, but think that to *require* them to accept such matter would unreasonably expose them to erosion of their advertising revenues. I have made it clear that I do not think broadcasters should escalate commercial time or seek to maximize their profits, but our system depends upon profitable commercial operation and I am not prepared to try to change that fundamental fact.

I do not think our ruling should be understood as holding that it would have been contrary to the public interest for WTOP to carry BEM's announcements, as other stations apparently did. While the brevity of the messages makes it impossible for them to develop ideas to any significant degree, I do not think we are in a position to rule that those who oppose the war in Vietnam should be completely barred from using this technique for getting their viewpoints across to the public. But I think their right of access to time on a station which has already adequately treated the war issues and has already re-

flected a particular claimant's position must depend on that station's willingness to accept such spots, with full understanding of its resulting obligations under the Fairness Doctrine, including the *Cullman* ruling.

Dissenting Opinion of Commissioner Nicholas Johnson

> The peculiar evil of silencing the expression of opinion is that it is robbing the human race; posterity as well as the existing generation; [and] those who dissent from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error . . .
>
> —J. S. Mill, *On Liberty*, quoted in *Buckley* v. *Meng*, 230 N.Y.S. 2d 924, 932 (Sup. Ct. 1962).

History will record, I believe, the fundamental misstep taken today by the Commission in its slow progress toward securing truly free speech for all citizens over the broadcast media. Almost two hundred years ago, the architects of our country drafted a constitutional scheme of government based on the bedrock of one paramount principle: that a free society would endure only so long as its citizens had the freedom to think, to speak openly, and to criticize their government. This First Amendment freedom of speech and press was "preferred" above all others, see *Marsh* v. *Alabama*, 326 U.S. 501, 506 (1946), *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945), for all other liberties could be defended only so long as speech remained free. But should free speech vanish, then the

informed electorate necessary to preserve other freedoms would cease to exist.

Yet freedom of speech does not exist as an abstraction. The First Amendment protects not just the right to speak, but the right to reach an audience—the right to *communicate*. Protection of the means used to disseminate ideas, therefore, as well as the availability of forums used for discussion and debate, must receive as much attention as the more abstract right to speech itself:

> The right of free speech necessarily embodies the *means* used for its dissemination because the right is worthless in the absence of a meaningful method of its expression. To take the position that the right of free speech consists merely of the right to be free from censorship of the content rather than any protection of the means used, would, if carried to its logical conclusion, eliminate the right entirely. The right to speak freely must encompass inherently the right to communicate. The right to speak one's views aloud, restricted by the ban that prevented anyone from listening, would frame a hollow right. Rather, *freedom of speech entails communication; it contemplates effective communication.*

Wollam v. *City of Palm Springs*, 379 P. 2d 481, 486 (Cal. 1963) (emphasis supplied).

The Supreme Court has often recognized this principle, holding that forums for the expression of views must remain free and open, and that the preservation of these forums for the communication of views between citizens is one of our most important goals. In *Hague* v. *CIO*, 307 U.S. 496 (1939), Mr. Justice Roberts made the statement that *Kunz* v. *New York*, 340 U.S. 290, 293 (1951), later elevated to precedent.

> Wherever the title of street and parks may rest, they have immemorially been held in trust for the use

> of the public, and time out of mind have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

Hague v. *CIO*, *supra* at 515. The Supreme Court has recognized this right of access to a "public forum" of communication in numerous other areas, including privately owned sidewalks, *Marsh* v. *Alabama*, 326 U.S. 501 (1946), modern shopping centers, *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), and public schools, *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503 (1969). And the Court has also acknowledged the importance of the press, see *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945), and the electronic media, see *Red Lion Broadcasting Co., Inc.*, v. *FCC* 395 U.S. 367 (1969), as forums or *means* for the communication of thought.

The question before this Commission, therefore, is the extent to which the First Amendment *requires* that the public forums of broadcasting be equated with the "streets and parks" of *Hague* v. *CIO*, and that the rights of citizens' access to those forums be included among the basic "privileges, immunities, rights and liberties of citizens." We must determine whether private corporate licensees of the FCC have any more right to exclude citizens from the use of their facilities, than a privately owned "company town," see *Marsh* v. *Alabama*, 326 U.S. 501 (1946), has a right to exclude citizens from its streets. The broadcast spectrum is public property belonging to the citizens of this country. It is entrusted for limited periods of time to the trusteeship of private entities, corporate broadcast licensees. I believe these corporate licensees must be

treated, for purposes of speech freedoms, as privately owned "company towns."

The issue, therefore, is not what policy the Commission might wish to adopt concerning the "advertisements" before us, but what the Constitution *requires* the Commission to adopt. "In seeking to provide the broadcasting media with the diversity *demanded* by the first amendment, . . . the Commission must avoid the perils of . . . abdication which would allow those possessing the most economic power to dictate what may be heard. . . ." *National Ass'n of Theatre Owners* v. *FCC*, 420 F.2d 194, 207 (D.C. Cir. 1969) (emphasis supplied). I believe the Commission has failed in this task.

The facts here are simply stated. Complainant, Business Executives Move for Vietnam Peace (BEM) is a well-established national organization with more than 2,700 members from business communities across the country. BEM has sought, unsuccessfully, for over a year, to purchase airtime on WTOP-AM in Washington, D.C., at its standard commercial rates, to present to residents of the nation's capital (including nationally elected members of the government) one-minute "spot announcements" urging immediate withdrawal of American troops from Vietnam and otherwise opposing the current Administration's war policy. WTOP-AM has denied BEM access to its broadcast facilities—which it freely offers to purveyors of mouthwash, underarm deodorant, and hand soap—on the ground that the station has a long-established policy of refusing to sell spot announcement time to individuals or groups with "controversial" views. WTOP-AM's principal justification for this policy is the belief—apparently not shared by BEM—that "subjects of this type require a more in-depth analysis than can be provided in a 10, 20 30, or 60 second announcement." The Commission has thrown the weight of its precedents and support behind

WTOP-AM's decision to bar the views proffered by BEM. Citing Section 3(h) of the 1934 Communications Act, the Commission argues that licensees are not "common carriers" and therefore WTOP-AM is "not required to open its doors to all persons seeking to use the station's facilities for whatever purpose." The majority thus delegates to "the licensee's judgment" the power to determine "the format for presentation of controversial issues 'and all other facets of such programming.'" Any other result, the Commission contends, "would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt."

The Commission's decision, I believe, ignores a long line of judicial precedent which guarantees to individuals a *right of access* to forums generally open to the public for expression of views. These cases, which I will discuss in detail below, establish the proposition that a private or public corporation, which exercises possession of, or control over, property which is open to the general public or to the communication of particular views, cannot discriminate between the persons or views that seek access to its facility, barring some and admitting others. BEM's request, therefore, places the following four issues before the Commission: *first*, are BEM's anti-war spot advertisements constitutionally protected "speech" under the First Amendment; *second*, is the action of WTOP-AM, a private corporation licensed and supervised by a public agency in a fiduciary or trustee capacity for public property, sufficient "state action" to bring the First Amendment's protections into operation; *third*, are BEM's proposed spot announcements an "appropriate" exercise of speech activities in the public forum of WTOP-AM's frequency, given the character, usual activity and purpose of the forum and the nature of competing uses; and *fourth*, is a limited right of non-commercial paid access" to WTOP-AM's frequency consistent with Section 3(h) of the Communi-

cations Act of 1934, which declares that broadcast licensees shall not be deemed "common carriers." I believe the Constitution compels an affirmative answer to all four questions. For the reasons stated below and in my dissenting opinion in Democratic National Committee, FCC 70-861, Aug. 5, 1970, I dissent to the majority's treatment of these issues.

I. ADVERTISEMENTS AS PROTECTED "SPEECH"

The Supreme Court has drawn a distinction between two types of speech: the first, political or social speech, is entitled to the fullest constitutional protection. Indeed, Professor Harry Kalven believes the "central meaning of the first amendment" is to preserve the citizen's right to criticize those who govern for him. Kalven, *The New York Times Case: A Note on 'The Central Meaning of the First Amendment,'* 1964 Sup. Ct. Rev. 191, 208-09; see Meiklejohn, *The First Amendment Is An Absolute*, 1961 Sup. Ct. Rev. 245, 256.

The second type of speech, "commercial" speech, however, has not been given much deference. "In the quarter century since *Valentine* v. *Chrestensen* [316 U.S. 52 (1942)], the notion that commercial advertising is not protected by the first amendment has been enshrined among the commonplaces of constitutional law." Note, *Developments in the Law: Deceptive Advertising*, 80 Harv. L. Rev. 1005, 1027 (1967); see, *e.g.*, *Ginzberg* v. *United States*, 383 U.S. 463, 474 n. 17 (1966); *Polak* v. *Public Util. Comm'n.*, 191 F.2d 450, 456-57 (D.C. Cir. 1951) (dictum), *reversed on other grounds*, 343 U.S. 451 (1952); see also, Note, *Freedom of Expression in a Commercial Context.* 78 Harv. L. Rev. 1191 (1965). In *Valentine* v. *Chrestensen, supra*, the Court upheld a municipal ban on the distribution of commercial pamphlets on city streets. The Court simply observed that "the Constitution

imposes no . . . restraint on government as respects purely commercial advertisinng." *Valentine* v. *Chrestensen*, 316 U.S. at 54.

Although the distinction drawn is an elusive one, it divides, perhaps, speech which seeks to influence political and social decisions in the marketplace of ideas from speech which seeks to influence private economic decisions in the marketplace of goods and services. Compare *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943) (conviction for door-to-door solicitation of contributions for religious literature reversed), and *Jamison* v. *Texas*, 318 U.S. 413 (1943) (advertisement on back of religious handbill protected), with *Breard* v. *Alexandria*, 341 U.S. 622 (1951) (conviction for door-to-door solicitation of magazine subscriptions upheld). And while this distinction has been severely criticized, see *Cammarano* v. *United States*, 358 U.S. 498, 513-15 (1959) (dictum) (Douglas, J., concurring), and I think with reason, it may indicate that the dissemination of "false" political ideas can evoke discussion or controversy which may refute or highlight the falsity of the original statement. "False" commercial assertions, by contrast, may only breed additional false claims from competitors with no corresponding improvements in the products sold. Note, 80 Harv. L. Rev. 1005, 1030 (1967). Viewed in this light, WTOP-AM and the Commission have relegated political and social speech to a peculiarly inferior role. By permitting broadcasters categorically to exclude political advertisements and accept only commercial announcements, the Commission has encouraged exclusion of highly valued political speech to the benefit of paid commercial speech.

With this in mind, it is clear that the paid anti-war advertisements proffered by BEM fall within the category of protected—indeed highly valued—political speech. The fact that BEM is willing to pay the "admission price" for

access to WTOP-AM's facilities does not detract from the purpose of its message to encourage political decisions in the marketplace of ideas. The Supreme Court in *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), conclusively laid all doubts to rest on this point:

> The publication here was not a "commercial" advertisement in the sense in which the word was used in *Chrestensen.* It communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern. . . . That . . . the advertisement [was paid for] is as immaterial . . . as is the fact that newspapers and books are sold. [citations] . . . *Any other conclusion would discourage newspapers from carrying "editorial advertisements" of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press.* [citations] . . . The effect would be to shackle the First Amendment in its attempt to secure "the widest possible dissemination of information from diverse and antagonistic sources." [citation] . . .
>
> . . . The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection.

New York Times Co. v. *Sullivan*, *supra*, *at* 266, 271 (emphasis supplied). "[W]hen an advertisement is the medium for noncommercial expression, constitutional freedoms apply in spite of its commercial nature." Note, *Resolving the Free Speech-Free Press Dichotomy: Access to the Press Through Advertising*, 22 U. Fla. L. Rev. 293, 309 (1969) (citing further authority at n. 131). *Accord*,

Banzhaf v. *FCC*, 405 F.2d 1082, 1101-02 (D.C. Cir. 1968); *Zucker* v. *Panitz*, 299 F. Supp. 102, 104 (S.D. N.Y. 1969); *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P.2d 982, 984-85 (Cal. 1967).

I conclude, therefore, that BEM's anti-war advertisements are "speech" deserving of First Amendment protection.

II. "STATE ACTION"

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech . . . ." Although the language of this amendment binds only the national government, the Supreme Court has extended its protection to actions by the states as well. *Fiske* v. *Kansas*, 274 U.S. 380, 387 (1927); *Gitlow* v. *New York*, 268 U.S. 652, 666 (1925). "Yet, while the Fourteenth Amendment affords protection from state action as well as that from the national government, it does not protect against wrongs done by private persons." *Chicago Joint Bd., Amal. Cloth. Wkrs.* v. *Chicago Tribune Co.*, 307 F. Supp. 422, 425 (N.D. Ill. 1969). In order, therefore, to establish a violation of the First Amendment, there must be "state action"—here by the federal government—which deprives a group or individual of the speech freedoms guaranteed by the First Amendment.

On its face, the refusal by WTOP-AM to accept BEM's advertisements is "private action" by a private corporate licensee, and therefore not restrained by the Constitution. Yet the "state action" requirement has been found in the actions of many non-governmental persons or corporations. In each case, the private action has been sufficiently "involved" with the state that the restraints of the Constitution have been found to apply. The question before us, therefore, is whether WTOP-AM's actions are involved with the federal government to such an extent that the

Constitution sets limits to its action. To paraphrase *Farmer* v. *Moses*, 232 F. Supp. 154, 158 (S.D.N.Y. 1964) (grounds of World's Fair equivalent in status to public property), the question is whether WTOP-AM's actions "are so impregnated with and supported by state . . . action as to place them within the ambit of the [First] Amendment, . . . even though [WTOP-AM] . . . possesses certain indicia and aspects of 'private' ownership and dominion."

I believe that WTOP-AM's rejection of BEM's advertisements clearly constitute "state action" under a number of state action theories.

A. Public Property

The broadcast frequencies are a valuable and scarce resource belonging to the public. Although broadcast licensees are given the temporary use of this public property for terminable three-year periods, ownership and ultimate control remain vested in the people of the United States. In Section 301 of the 1934 Communications Act, Congress evidenced its clear intention that the broadcast spectrum should remain "public property:"

> It is the purpose of this Act . . . to maintain the control of the United States over all channels of interstate and foreign radio transmission; and to provide for the use of such channels *but not the ownership thereof*, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. [Emphasis supplied.]

The mere fact that the licensee's actions are taken with respect to public property should suffice to meet the test of required "state action." See *Tucker* v. *Texas*, 326 U.S. 501 (1946) (actions by municipal officials over property of government-owned town comprised "state action").

B. Private Lessee of Public Property

It is equally clear that the requirement of "state action" cannot be evaded by the *lease* of public property, by a public entity, to a private individual. Discrimination by private lessees with respect to public property, for purposes of the First Amendment, has unequivocally been deemed state action by the courts. *E.g.*, *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961) (state leased space in public building to privately owned restaurant); *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 438 (S.D.N.Y. 1967) (city "leased" public advertising space on city buses to "private" advertising agency); *Farmer* v. *Moses*, 232 F. Supp. 154, 159 (S.D. N.Y. 1964) ("when a city or state leases public property [such that] . . . services . . . are actually performed by a 'private' lessee, the latter stands in the shoes of the government"); *Anderson* v. *Moses*, 185 F. Supp. 727, 733 (S.D. N.Y. 1960) ("private . . . concessionair [operated] on public . . . property for the convenience and comfort of the public"); *Hillside Community Church, Inc.* v. *City of Tacoma*, 455 P.2d 350 (Wash. 1969) (action by private advertising agency, pursuant to "contract" with city, in removing advertisements from municipal buses comprised stated action); *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P.2d 982 (Cal. 1967) (publicly owned advertising space on municipal buses "leased" to private advertising company). In *Marsh* v. *Alabama*, 326 U.S. 501 (1946), a privately-owned "company town" was found to serve a "public function," and that its exclusion of a person seeking to distribute religious literature comprised "action" sufficient to bind it by the requirements of the First Amendment. If under certain circumstances the private owner of private property is bound by state action, then surely the private *user* of *public* property is no less bound. See, *e.g.*, *Tanner* v. *Lloyd Corp.*, 308 F. Supp.

128 (D. Ore. 1970) (privately owned shopping center); *Schwartz-Torrance Inv. Corp.* v. *Bakery & Con. Wkrs. U.*, 394 F. 2d 921 (Cal. 1964) (same).

In sum, therefore, "a broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. . . ." *Office of Communication of United Church of Christ* v. *FCC*, 359 F 2d 994, 1003 (D.C. Cir. 1966). Surely we could not assume that the federal government has leased public property to private individuals, yet attempted to free them from the obligations of the Constitution. First Amendment obligations are certainly among those imposed upon all broadcast licensees.

C. *"Delegation" of State Power*

When the state "delegates" its authority over public property to the use and control of a private entity, then the exercise of that use is state action for purposes of the Constitution.

> [W]here a state delegates an aspect of the elective process to private groups, they become subject to the same restraints as the State. [Citation.] . . . That is to say, when private individuals or groups are endowed by the State with powers of functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations.

Evans v. *Newton*, 382 U.S. 296, 299 (1966) (although a state "delegated" its authority over public park to private trustees, discriminatory conduct of trustees comprised state action). WTOP-AM has exercised powers of control over its broadcast frequency which are governmental in nature—that is, the exclusion of persons wishing to express their views through a public facility of communica-

tion. See, *e.g.*, *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961) (discrimination by private restaurant lessee using and occupying publicly owned land and building "dedicated to 'public uses'" was state action); *Smith* v. *Allwright*, 321 U.S. 649 (1944) ("state delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party's action the action of the state"). Because, like any lessee, a broadcaster derives all his power through delegation from the federal government, private actions taken by the broadcaster-licensee-trustee with respect to his trust "res" are imbued with the attributes of state action. A licensee can only exercise the power he has, and the power he has flows from the government.

D. Involvement of Regulatory Agency

In *Public Utilities Comm'n.* v. *Pollak*, 343 U.S. 451 (1952), the Court addressed the question whether action by a privately owned public bus company, regulated by the Public Utilities Commission, was to be treated for purposes of the Constitution as action by a governmental entity. In finding sufficient state action, the Court specifically relied upon the fact that the bus company "operate[d] its service under the regulatory supervision of the Public Utilities Commission of the District of Columbia which is an agency authorized by Congress." *Id.* at 462. The Court cited as authority the following proposition from *American Communications Assn.* v. *Douds*, 339 U.S. 382, 401 (1950): "[W]hen authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." There is little doubt that both the Congress and this Commission are substantially involved in the operations of broadcast licensees. Again, this involvement should provide the

requisite state action. Indeed the *Commission itself* has expressly acknowledged that discrimination by licensees may constitute improper state action:

> [A] substantial case has been made that because of the relationship of the government of the United States to broadcast stations, the Commission has a constitutional duty to assure equal employment opportunity. . . . The contention is rested upon such decisions as *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

Nondiscrimination Employment Practices of Broadcast Licensees, 18 F.C.C. 2d 240, 241 & n.2 (1969).

E. State Encouragement or Lack of Neutrality

In *Evans* v. *Newton*, 382 U.S. 296 (1966), a state court permitted a municipality to transfer its control over a public park to private trustees who denied Negroes access to the facility. The Supreme Court barred the discrimination. In a concurring opinion, Justice White pointed out that a provision of state law permitted private trust settlors to dedicate their property to the public for use as a park and limit the use of that park "to the white race only." Although this statute did not *compel* a settlor to discriminate, it certainly indicated that such an action would be *valid*. According to Justice White, this statute "depart[ed] from a policy of strict neutrality in matters of private discrimination by enlisting the State's assistance only in aid of racial discrimination and . . . involve[d] the State in the private choice. . . ." *Id.* at 306. By encouraging discrimination, although not requiring it, the state sufficiently intertwined itself with private discriminations to constitute state action. See also *Reitman* v. *Mulkey*, 387 U.S. 369 (1967).

There are close parallels with WTOP-AM's censorship of BEM. Section 3(h) of the Communications Act provides that licensees shall not be deemed a "common car-

rier," and the Commission, reversing prior precedent, see *e.g., United Broadcasting Co.* (*WHKC*), 10 F.C.C. 515 (1945), has interpreted this to give licensees the discretion to close their doors to persons seeking to use the station's facilities. See *Letter to Washington Women's Strike for Peace*, Nov. 22, 1965 (cited by the majority in the instant case). I believe that the Commission's interpretations and enforcement of the Communications Act, together with its improperly intentioned reversal of prior Commission doctrine, see *Reitman* v. *Mulkey*, *supra*, provides similar "encouragement" for discrimination by private licensees of the sort involved here. *Cf. Adickes* v. *S. H. Kress & Co.*, 38 U.S.L.W. 4434, 4444 (Sup. Ct., June 2, 1970) (Brennan, J, concurring in part); *Lombard* v. *Louisiana*, 373 U.S. 267 (1963) (statements by Mayor and Superintendent of Police encouraging private discrimination found to be state action). This encouragement should suffice for state action. We need not address the question whether Section 3(h) of the Act itself "encourages" licensee discrimination sufficient for state action.

F. State Action Through Quasi-Judicial FCC Action

In *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), the Court announced that "action of state courts and judicial officers in their official capacities is to be regarded as action of the State. . . ." *Id.* at 14. Although the Court also suggested that state action might not be found where a State through its court merely "abstained from action, leaving private individuals free to impose such discriminations as they see fit" *Shelley* v. *Kraemer*, 334 U.S. at 19, this distinction between court "action" and "inaction" has apparently been weakened by later rulings. Thus, in *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), the Court remarked, in finding the First Amend-

ment to protect the New York Times against a civil suit by a *private* party, that "[i]t matters not that the law has been applied in a civil action and that it is common law only. . . . The test is not the form in which state power has been applied but, *whatever the form*, whether such power has in fact been exercised." *Id.* at 265 (emphasis supplied). For a discussion of the state action implications of *New York Times Co.* v. *Sullivan*, see Van Alstyne, *Mr. Justice Black, Constitutional Review, and the Talisman of State Action*, 1965 Duke L. Rev. 219, 227-30.

In a recent opinion, *Edwards* v. *Habib*, 397 F. 2d 687 (1968), Judge Wright, speaking for the Court, discussed in detail current interpretation of *Shelley* v. *Kraemer*. After a review of the precedents and other prevailing views, he summarized them thus:

> It has been suggested that there is state action, not only when an individual asserts a claim of right against a state, but also when he asserts a claim of right against the claims of right of other persons and the state resolves the conflict according to its policy of what is reasonable under the circumstances, *i.e.*, according to its law. [Footnote omitted.] Once this "state action" is established, the question then becomes simply "whether the particular state action in the particular circumstances, determining legal relations between private persons, is constitutional when tested against the various federal constitutional restrictions on state action." [Citing Horowitz, *The Misleading Search for "State Action" Under the Fourteenth Amendment*, 30 So. Cal. L. Rev. 208, 209 (1957)].
>
> . . . On this theory, if it would be unreasonable to prefer [a particular private person's] . . . interests, it would also be unconstitutional.

Edwards v. *Habib*, *supra* at 695. For commentators discussing this view, see Van Alstyne, *Mr. Justice Black, Constitutional Review, and the Talisman of State Action*, *supra*, at 241-45; Horowitz, *Fourteenth Amendment Aspects of Racial Discrimination in "Private" Housing*, 52 Calif. L. Rev. 1 (1964); Williams, *The Twilight of State Action*, 41 Texas L. Rev. 347 (1963); Van Alstyne and Karst, *State Action*, 14 Stan. L. Rev. 3 (1961); Horowitz, *The Misleading Search for "State Action" Under the Fourteenth Amendment*, *supra*.

Marsh v. *Alabama*, 326 U.S. 501, 509 (1946), apparently provides support for this view. There, the Court "balance[d] the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion" and stressed that the latter freedoms occupied "a preferred position." See also *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), and *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), in which state courts were used merely as forums for the resolution of essentially private disputes. In all these cases speech freedoms were involved, and in each case the Court "balanced" the rights to speech under the First Amendment against the rights to the enjoyment of property under the Fifth Amendment.

Rather than forcibly entering the premises controlled by WTOP-AM to broadcast their message through attempted "self-help," BEM has come to this Commission to seek a legal adjudication of its rights. After an investigation of the factual allegations and due consideration of BEM's legal arguments, *cf. Public Utilities Comm'n* v. *Pollak*, 343 U.S. 451, 462 (1952), the Commission has effectively "ejected" BEM from WTOP-AM's facilities. Compare *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308

(1968) (state trespass laws used to eject picketers from private property). By adjudicating the rights and liabilities of the parties to this matter, and therefore binding the parties to a certain course of action, this Commission has invoked the "full panoply of its power," *Shelley* v. *Kraemer*, 334 U.S. at 19, to banish BEM to silence. This, I believe, should provide sufficient state action to invoke the restraints of the Constitution. This is particularly so when the broadcast licensee is not a purely private entity at all, but is licensed by the federal government and performs a "public function" similar to that performed by the government toward public parks and streets. See *Marsh* v. *Alabama*, 326 U.S. 501, 507 (1946).

G. State "Acquiescence"

In all the cases discussed in the previous sections, the courts have sought to establish at least some formal connection between private and public action. But in a number of important cases, the immediate "action" necessary to invoke the First Amendment was not direct, affirmative involvement by the government in private conduct, but state "acquiescence" in a certain type of private actions. In all these cases, however, the state had either relinquished its power to private entities (through assignments of control, or leases), or simply abdicated its power role (by failing to impose requirements, for example, on corporate entities under its licensing control). Accordingly, where the power exercised by the private individual is normally or even potentially exercisable by the state, but where the state has relinquished or abdicated that power, then private actions pursuant to that power comprise state action—that is, the "permission" of private discrimination which the state has the power to prevent. In the First Amend-

ment area, therefore, it seems that the refusal by the state to enforce freedom of speech in forums under the potential control of the government may provide sufficient "state action" to restrict the speech abridgement activities of private individuals.

In *Marsh* v. *Alabama*, 326 U.S. 501 (1946), for example, the Court found that a private company town's discrimination involved state *in*action sufficient to invoke the Constitution:

> [*M*]*ere acquiescence* by the State in the corporation's use of its property . . . would still have been performance of a public function and discrimination would certainly have been illegal . . . . And certainly the corporation can no more deprive people of freedom of press and religion than it can discriminate against Commerce . . . . [T]he circumstance that the property rights to the premises where the deprivation of liberty . . . took place, were held by others than the public, is not sufficient to justify the State's *permitting* a corporation to govern a community of citizens so as to restrict their fundamental liberties . . . .

Id. at 507 & n. 4, 509 (emphasis supplied). Presumably because the corporation was licensed by the state, and because the corporation performed a "public function" similar to that of any municipality, state abdication of authority comprised state action. To be sure, there was technical "state action" present in *Marsh*, in that the state was asked to enforce its trespass laws against an individual invading private property. But this element could not have been controlling. If, for example, the company had sent its corporate officers out to the town's border to prevent Marsh from setting foot on corporation property, and if Marsh instead had asked for a court injunction to restrain the officers' actions and permit his entry to the corporation's land, the result could have

been no different. Compare *Tanner* v. *Lloyd Corp.*, 308 F. Supp. 128, 130 (D. Ore. 1970) (action to compel entry to shopping center).

In *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961), the Court found that discrimination by a privately owned restaurant that had leased its facilities from the state comprised state action. Again, the Court stressed the element of *in*action as supplying a necessary link between private conduct and the Constitution:

> [I]n its lease with [the restaurant] the [State Parking] Authority *could* have affirmatively required [the restaurant] . . . to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation. But no State may effectively *abdicate* its responsibilities by either *ignoring* them or by merely *failing to discharge* them whatever the motive may be. . . . By its *inaction*, the Authority, and through it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination.

Id. at 725 (emphasis supplied). Other cases are in accord. See, *e.g.*, *Evans* v. *Newton*, 382 U.S. 296 (1966); *Terry* v. *Adams*, 345 U.S. 461 (1953); *Smith* v. *Allwright*, 321 U.S. 649 (1944).

There is, in the case before us, a clear and direct analogy. The government has "delegated" to WTOP-AM the use of valuable public property. Although Congress has exercised its power to prevent licensee censorship in other areas, stating in Section 315(a) that the "licensee shall have no power of censorship over the material broadcast under the provisions of this section," and although the exercise of this power to prevent private censorship seems clearly permissible under the Constitution, *cf.* *United States* v. *Price*, 383 U.S. 787 (1966); *United*

States v. *Guest*, 383 U.S. 745 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), Congress apparently has not barred various forms of licensee censorship by specific legislation. By failing clearly to prohibit licensee censorship, Congress and the Commission have thus "permitted" a form of private censorship which appears inconsistent with the First Amendment.

H. State "Enforcement" of the First Amendment

The division between state and private action is by no means distinct, for the decision to inject the restraints of the Constitution into ostensibly private actions is fundamentally one of policy. A number of commentators, therefore, at least in the Fourteenth Amendment area of racial discrimination, have argued that where important or "preferred" rights are involved, the state cannot tolerate private discrimination or abridgement of those rights. Otherwise, the purposes of the Fourteenth Amendment would be thwarted. Accordingly, they have suggested that the state implicates itself in private action when it *fails affirmatively to enact* legislation barring private discrimination. See, *e.g.*, Black, *Foreword: "State Action," Equal Protection, and California's Proposition 14*, 81 Harv. L. Rev. 69, 73-74 (1967); Silard, *A Constitutional Forecast: Demise of the "State Action" Limit on the Equal Protection Guarantee*, 66 Colum. L. Rev. 855 (1966); Henkin, *Shelley* v. *Kraemer, Notes for a Revised Opinion*, 110 U. Pa. L. Rev. 473, 481-85 (1962). Thus, according to this view, there is unconstitutional state action whenever the state fails to eliminate private discrimination. According to this theory, the technical requirements of "state action" may be found, via *Shelley* v. *Kraemer*, in any court action. The only relevant question is where to draw the line between permissible and impermissible state action—since the limitless scope of *Shelley* would apply state action to all judicial cases. Ac-

cording to proponents of this view, the state has the obligation to legislate against private discrimination until that legislation begins to abridge other important, counterveiling individual rights, such as liberty, property, and privacy. See, *e.g.*, Black, *supra*, at 100-103. What this means, therefore, is that a state court could still enforce certain kinds of private discrimination, even though the state itself could not discriminate in such a manner. "The state court, for instance, could constitutionally probate a will leaving the deceased's property to the Catholic Church, even though the state could not constitutionally make a comparable disposition of its own funds." *Edwards* v. *Habib*, 397 F.2d 687, 692 n. 13 (D.C. Cir. 1968) (dictum). "The state, through its police or courts, could aid an individual in his quest to keep Negroes from a dinner party in his home even though it could not keep Negroes from a courthouse cafeteria or even from a privately owned hotel solely on account of their race." *Edwards* v. *Habib*, *supra*, at 693 (dictum). The point here is that in either case state action would exist; however, that action would be constitutional, or unconstitutional, depending on a balance of various important rights: liberty, property and privacy, balanced against freedom from racial discrimination.

As yet, this theory has not been frequently applied to discriminatory state action under the First Amendment. This may in part be historical accident, but it may also result from differences in the language of the First and Fourteenth Amendments. On the other hand, as the court in *Edwards* v. *Habib*, 397 F.2d 687, 693-94 (D.C. Cir. 1968), points out, the Supreme Court in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 265 (1964), has extended the protection of the First Amendment to the New York Times against action by a *private* individual for libel. The fact that neither Congress nor the State had made a law prohibiting libel was apparently deemed

irrelevant. The Supreme Court, therefore, has found sufficient "state action" simply in a state court adjudication of the rights of two private parties.

The California Supreme Court has apparently adopted this position explicitly. *In re Hoffman*, 434 P.2d 353 (Cal. 1967), involved a trespass conviction of persons seeking to distribute anti-war leaflets on the property of a privately-owned railroad terminal. Citing *New York Times Co.* v. *Sullivan* and *Marsh* v. *Alabama*, the Court apparently felt that state action was inherent in its own decision, no matter what the result, whenever it was required to resolve the competing claims of private individuals:

> If the state curtails First Amendment freedoms to protect an interest that is nonexistent, whether claimed on behalf of the government or on behalf of a private individual, it violates the First and Fourteenth Amendments.

The "curtailment" of First Amendment freedoms by the state could only have been a reference to sanctions imposed *by the court* on the persons distributing the leaflets. State action, in other words, was assumed to exist in the court's decision alone. The only critical question was striking an appropriately weighted balance between speech and other freedoms. This balancing process was simplified for the court in *Hoffman* because the rights of privacy and liberty that normally inhere in property ownership were apparently "nonexistent." Once the owners of the railway terminal had "opened up" their property to the general public, they had (for profit) obviously given up any "privacy" they might otherwise have had. Although the station owners might have reclaimed their privacy by closing the terminal to the public, they could not, at the same time, open it to the public for some purposes, but exclude others on the alleged need for privacy.

Many courts and legal scholars have pointed out the need for affirmative action by the government to protect the rights guaranteed by the First Amendment. In *Associated Press* v. *United States*, 326 U.S. 1 (1945), the Supreme Court wrote:

> It would be strange indeed, however, if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom . . . . Surely a command that the government itself shall not impede the free flow of ideas does not afford non-government combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom . . . . Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.

Id. at 20. And Justice Fortas has remarked, "The courts may not and must not permit either public or private action that censors the press." *Time, Inc.* v. *Hill*, 385 U.S. 374, 420 (1967) (dissenting, joined by Warren, C.J., and Clark, J.).

In *Firstamerica & Dev. Corp.* v. *Daytona Beach News-Journal Corp.*, 196 So.2d 97, 99 (Fla. 1966) the court observed:

> Freedom of the press was never intended to be a special privilege extended to its publishers. On the contrary, it was conceived by the writers of the Constitution and of the Bill of Rights to be a right of the people in a democracy to unrestricted information and presentation of views on government for which the press was a tailor-made medium of dissemination. Freedom of the press, therefore, is a people's personal right rather than a property right. . . .

Other courts have concurred. "Those [constitutional] guarantees are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society." *Time, Inc.* v. *Hill*, 385 U.S. 374, 389 (1967). "[F]reedom of the press is a right which belongs to the public; it is not the private preserve of those who possess the implements of publishing." *State* v. *Buchanan*, 436 P. 2d 729, 731 (Ore. 1968). "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 390 (1969).

There is, in fact, a strong argument that Congress, through the Communications Act of 1934, enforced the First Amendment in the area of broadcasting by applying its restraints to private licensees. According to this view, Congress intended licensees to operate in the public interest, convenience and necessity, and this necessarily entailed patterns of operation consistent with First Amendment prohibitions on censorship. Indeed, at one time the Commission itself apparently adopted this view. In *United Broadcasting Co. (WHKD)*, 10 F.C.C. 515 (1945), for example, the Commission said: "The spirit of the Communications Act of 1934 requires radio to be an instrument of free speech," and it warned against "any type of censorship which would undertake to impose the views of the licensee on the material to be broadcast." *Id.* at 517-18. If the Communications Act does apply the First Amendment to broadcasters, then the search for state action becomes unnecessary.

Yet what has happened to that free and open "marketplace of ideas" since the founding of our country? As R. H. S. Crossman has seen, a new political, economic and social revolution "has concentrated coercive power and thought control in a few hands." Power has shifted

from those who control the "means of production" to "those who control the media of mass communication and the means to destruction (propaganda and the armed forces)." R. H. S. Crossman, *The Politics of Socialism* 44 (1965). Another commentator has noted, "it is not that the mass communication industry is pushing certain ideas and rejecting others but rather that it is using the free speech and free press guarantees to avoid opinions instead of acting as a sounding board for their expression." Barron, *Access to the Press—A New First Amendment Right*, 80 Harv. L. Rev. 1641, 1646 (1967). And V. O. Key has warned:

> [A]ttention to the economic aspects of the communications industries serves to emphasize the fact that they consist of commercial enterprises, not public service institutions. . . . They sell advertising in one form or another, and they bait it principally with entertainment. Only incidentally do they collect and disseminate political intelligence. . . . [N]ewspaper publishers are essentially people who sell white space on newsprint to advertises. . . .

V. O. Key, *Public Opinion and American Democracy* 378-79 (1961).

The growing concentration of power over the media of communication into private corporate hands will require new concepts of "state action" if freedom of speech is to be preserved. Private corporate censorship by radio and television licensees must become a thing of the past if dissent and diversity of views in this country is to flourish. See generally *Letter to Hon. Richard L. Ottinger* [*Judy Collins incident*], FCC Public Notice No. 47876, April 20, 1970 (dissenting opinion); Johnson, *Public Channels and Private Censors.* The Nation, March 23, 1970, p. 329. There is, therefore, a direct legal and social connection between the power of the mass media, whose owners stand

like a colossus astride the channels of communications, and the state action rquirement that the First Amendment's protection does not become operative until speech is abridged by a government-involved entity. *Marsh* v. *Alabama*, 326 U.S. 501 (1946), is perhaps the opening wedge. It holds that private corporations must not be unleashed to abridge personal freedoms at will. A. J. Berle, in commenting on *Marsh* v. *Alabama*, has stated this important principle with great perceptivity:

> The emerging principle appears to be that the corporation . . . is as subject to constitutional limitations which limit action as is the state itself. . . . The preconditions of application are two: the undeniable fact that the corporation was created by the state and the existence of sufficient economic power concentrated in this vehicle to invade the constitutional right of an individual to a material degree. This is new as a rule of law, but it is typically American in tradition. . . . The principle is logical because . . . the modern state has set up, and come to rely on, the corporate system to carry out functions for which in modern life by community demand the government is held ultimately responsible. It is unlimited because it follows corporate power whenever that power actually exists. . . . Instead of nationalizing the enterprise, this doctrine "constitutionalizes" the operation.

Berle, *Corporate Activity—Protection of Personal Rights From Invasion Through Economic Power*, 100 U. P. L. Rev. 939, 942-43 (1952); see also, St. Antoine, *Color Blindness But Not Myopia: A New Look at State Action, Equal Protection and 'Private' Racial Discrimination*, 59 Mich. L. Rev. 993 (1961); Miller, *The Constitutional Law of the 'Security State,'* 10 Stan. L. Rev. 620, 661-66 (1958).

There are only a limited number of ways in which a person can obtain access to the mass media of communica-

tion: (i) buy a radio or television station; (ii) buy commercial space for promotion of goods and services; (iii) develop a situation worthy of news coverage (*e.g.*, demonstrations, street marches, etc.); (iv) obtain the sympathy of an editorial staff member who will present one's views by "proxy;" (v) obtain rebuttal time under the fairness, personal attack, or equal time doctrines; or (vi) purchase time for non-commercial speech. Yet in every case, access to the most important media of communication our century have seen is severely limited.

Thus, (i) the Commission has already taken steps to make access through ownership even more difficult than it already is. See *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants*, 35 Fed. Reg. 822 (1970); *Petitions by B.E.S.T.*, 21 F.C.C. 2d 355 (1970), *reconsideration denied*, FCC 70-738 (July 21, 1970). (ii) Commercial space for goods and services both excludes those with purely political or social speech, and abdicates the bulk of radio and television "access time" to monolithic commercial and corporate enterprises. (iii) Demonstrations and street marches soon fade in newsworthiness, and people wishing to reach the bulk of the American people must increasingly resort to the tactics of extremism to capture the largess of the television eye. (iv) The sympathy of a radio or television station's editorial staff is often difficult to obtain, and is perhaps nonexistent in those communities with few radio or television outlets. And (v), the Commission has been reluctant to apply the fairness doctrine evenhandedly to those with minority or dissenting views. See, *e.g.*, *Letter to Mr. Donald A. Jelinek*, FCC 70-595 (June 4, 1970) (anti-military recruitment announcements); *Letter to Mrs. Dorothy Healey*, FCC 70-658 (June 24, 1970) (attack on member of Communist Party for "unpatriotic" views).

Only (vi), therefore, the ability to purchase time at going commercial rates can offer many Americans any opportunity for electronic speech. Although the First Amendment was not enacted to sanctify the views held by the corporate owners of the mass media, government inattention and failure to "enforce" the First Amendment has had that effect. Accordingly, "non-commercial access" may be required under the First Amendment to preserve or create a true "marketplace of ideas" in the electronic media. Both commentators and courts have recognized this proposition. See *e.g.*, Silver, *Free Speech on Private Property*, 19 Cleveland State L. Rev. 372 (1970); Barron, *An Emerging First Amendment Right of Access to the Media?*, 37 Geo. Wash. L. Rev. 487 (1969); Horning, *The First Amendment Right to a Public Forum*, 1969 Duke L. Rev. 931; Barron, *Access to the Press—A New First Amendment Right*, 80 Harv. L. Rev. 1641, 1644-50 (1967); Gorlick, *Right to a Forum*, 71 Dick. L. Rev. 273 (1967); Note, *The Listener's Right to Hear in Broadcasting*, 22 Stan. L. Rev. 863 (1970); Note, *Resolving the Free Speech—Free Press Dichotomy: Access to the Press Through Advertising*, 22 U. Fla. L. Rev. 293, 304 (1969).

I conclude, therefore, from the foregoing discussion, that BEM's advertisements are constitutionally protected speech under the First Amendment, and that WTOP-AM's action in refusing that proffered speech is sufficiently involved with the state to invoke the restraints of the Constitution. I have engaged in this detailed treatment of "state action" for one principle reason: to lay conclusively to rest any argument that licensees have the freedom to censor at will, unrestrained by the First Amendment. They do not. Radio and television licensees, when they act vis-a-vis the people, must be treated, for purposes of the Constitution, as if they were agents of the government. Broad-

cast licensees have no more absolute right to impose bans on speech over their facilities than do groundskeepers in public parks. In all cases involving demands for "access" to the mass media, the only question is whether the broadcaster's restrictions and limitations are *reasonable.* A licensee may obviously impose reasonable "time, place and manner" restrictions upon the use of his facility; but he can no more absolutely ban certain kinds of speech or types of speakers than the government can ban citizens from public parks and streets. *Cf. Hague* v. *CIO,* 307 U.S. 296 (1939).

III. THE "APPROPRIATENESS" OF THE SPEECH IN THE PARTICULAR FORUM

Over the past few years, the courts have dealt with a number of cases in which persons wished to exercise speech freedoms in conjunction with public or private property—for example, public streets and parks, train stations, bus terminals, schools, and so forth. In most of these cases, the court has first established the existence of state action (or disposed of it as unimportant). Then, the court has asked two types of questions: first, is the property in issue an appropriate forum for the communication of views; and second, has the person owning or controlling that forum "discriminated" between individuals or particular views in a manner which is inconsistent with the Constitution. The answer to the first question normally depends on whether the property has "traditionally" been used as a forum for communication, as in *Hague* v. *CIO, supra,* or whether the property has been "opened up" to the general public in such a manner that speech on that property would be a normal activity. The answer to the second question has generally turned on whether the property owner's restrictions on speech are "reasonable," and this in turn depends on whether

the speech interferes with any important property right (such as privacy, exclusive possession, freedom from interference or obstruction, etc.) which is *worth preserving*. As stated in *In re Hoffman*, 434 P. 2d 353 (Cal. 1967), the courts will not curtail First Amendment freedoms "to protect an interest that is *nonexistent*. . . ." *Id.* at 356 (emphasis supplied).

The doctrines evolved by the courts are contained in the following proposition: When private property, which is an appropriate forum for communication, is "opened up" to general use by the public, then the "private" owner of that property "waives" his traditional property rights to privacy and exclusivity of use, and cannot abridge the speech rights of individuals seeking to use his "forum" for the expression of views. Under certain circumstances (although perhaps not in the broadcast area), the private owner may entirely close his property to the public; but if he opens it at all, he demonstrates that he has no real property interest of "privacy," and he cannot therefore close it selectively to specific persons or particular views.

A. Existence of a "Forum"

In *Marsh* v. *Alabama*, 326 U.S. 501 (1946), a person seeking to distribute religious literature on the streets of a privately owned "company town" was prosecuted for trespass at the instance of the company owners. The Court reversed, finding that the privately owned town in fact performed a "public function" similar to that of any town, whether private or publicly owned, and stated:

> Ownership does not mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . .

> . . . Whether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such a manner as the channels of communication remain free.

Id. at 506, 507. Although the Court felt the private corporation could entirely "close the sidewalk" to the public, *Marsh* v. *Alabama*, *supra* at 505 n. 2, the corporation could not "discriminate" against certain religious views once it had generally opened the sidewalk up to the public. *Id.* at 507.

Many other cases have followed the doctrine of *Marsh* v. *Alabama*, holding that in certain circumstances private property "may, at least for First Amendment purposes, be treated as though it were publicly held." *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308, 316 (1968). See, *e.g.*, *Tanner* v. *Lloyd Corp.*, 308 F. Supp. 128 (D. Ore. 1970); *Hillside Community Church, Inc.* v. *City of Tacoma*, 455 P. 2d 350 (Wash. 1969); *In re Lane*, 457 P. 2d 561 (Cal. 1969); *In re Hoffman*, 434 P. 2d 353 (Cal. 1967); *Schwartz-Torrance Inv. Corp.* v. *Bakery & Con. Wkrs. U.*, 394 P. 2d 921 (Cal. 1964); *Amalgamated Cloth. Wkrs.* v. *Wonderland Shop. Ctr.*, 122 N.W. 785 (Mich. 1963) (affirmance by equally divided court). For other cases in which the court found the existence of a "public forum" for communication of views, see, *e.g.*, *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503 (1969) (public school); *Wolin* v. *Port of New York Authority*, 392 F. 2d 83 (2d Cir. 1968) (bus terminal); *Zucker* v. *Panitz*, 299 F. Supp. 102 (S.D.N.Y. 1969) (public high school newspaper); *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 438 (S.D.N.Y. 1967) (public subway walls); *Wirta* v. *Alameda-Contra Costa Transit District*, 343 P. 2d 982 (Cal. 1967) (public busses);

Danskin v. *San Diego Unified School Dist.*, 171 P. 2d 885 (1946) (public school buildings); *People* v. *St. Clair*, 56 Misc. 2d 326, 288 N.Y.S. 2d 388 (Crim. Ct. 1968) (public subway platform).

In sum, these cases all stand for the proposition that where property, publicly or privately owned, is "opened up" for general use by the public, whether or not that use directly involves speech activities, then the facility cannot be closed to speech unless its exercise directly and substantially interferes with the facility's primary use—for example, as a shopping center, bus station, railway terminal, subway, or school.

In the case before us involving WTOP-AM's rejection of BEM's advertisements, there seems little question that the frequency controlled by WTOP-AM is a "forum" for the communication of ideas. Indeed, that appears to be its exclusive purpose, whether those ideas be political, commercial or entertainment. And there is also no question that WTOP-AM has "opened up" the use of that frequency to the general public—by making *commercial* advertising time available to the general public on a first-come, pay-as-you-go basis. See, *e.g.*, *Kissinger* v. *New York Transit Authority*, *supra*; *Zucker* v. *Panitz*, *supra*; *Hillside Community Church, Inc.* v. *City of Tacoma*, *supra*; and *Wirta* v. *Alameda-Contra Costa Transit District*, *supra*, all cases in which the owner of private or public property opened up his facility for the display of private commercial advertisements. In each case, the court found that a "public forum" for the communication of views was present. Whether or not WTOP-AM's opening of its forum for the communication of private commercial views constitutes an "opening up" for non-commercial (but also paid) views, will be considered below.

B. "Reasonable" Use of Forum

Every licensee must retain some power to reject programming—if only when it fails to meet certain quality standards, or violates federal law (lotteries, obscenity, etc.). But just as clearly the licensee, as a trustee for the public, does not possess unlimited power to monopolize the use of the airwaves. The essential question, therefore, is whether the use of advertising "space" or the broadcast spectrum by BEM is "reasonable" and consistent with other uses of that spectrum by the licensee.

The Commission and the courts must begin to draw guidelines for "reasonable" access to the broadcast frequencies, seeking to ensure that the electronic media of twentieth century communication are as open to the public as the soap boxes, public parks, and town hall meetings of the last century. *Cf.* Kalven, Jr., *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1, 21-32. On the one hand, "[t]he rights of free speech . . . do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time." *Cox* v. *Louisiana*, 379 U.S. 536, 554 (1964) (Goldberg, J.). But on the other hand, "the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment." *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 390 (1969).

The FCC and the courts have already begun to develop variants of the access doctrines latent in *Red Lion*. The fairness, personal attack, and equal time doctrines all curtail the licensee's discretion to reject programming. So does the requirement that the licensee ascertain community needs and interests and devote "some significant proportion of [its] . . . programming" to them. *City of*

Camden, 18 F.C.C. 2d 412, 421 (1969). In light of the "state action" discussion above there may well be limits on the ability of a licensee to censor out of a prepared program, during broadcast, the remarks of an invited guest. See *Letter to Cong. Richard L. Ottinger* [*Judy Collins incident*], FCC Public Notice No. 47876, April 20, 1970 (dissenting opinion). In the case here before us, BEM is willing to pay the "going commercial rate" to gain access to WTOP-AM's facilities. Therefore, unlike fairness doctrine cases, a requirement of access imposed on WTOP-AM with respect to this anti-war announcement *would impose no financial burden on the station.* This is an extremely important point. Compare *Letter to Mr. Donald A. Jelinek*, FCC 70-595, (June 4, 1970) (dissenting opinion at pp. 21-22) (free public service announcements would impose no financial burden on licensee). So long as the party seeking access to a broadcast facility is willing to pay the going rate, we need not face the equal protection question posed by persons financially unable to pay for their "privilege" of electronic speech.

The state and federal courts have, during the past few years, addressed precisely the same question before this Commission—although in the somewhat different context of *spacial* forums (parks, streets, train terminals, etc.), and not *electronic* forums. In every case involving persons who sought only to use the advertising facilities provided to commercial advertisers, the courts decisively ruled that the owner of the property in question could not admit commercial advertisements and exclude political ones.

The germinal case in this area was decided by the California Supreme Court in 1967. In *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P. 2d 982 (Cal. 1967), the members of Women for Peace brought suit

against a public Transit District, operating the municipal bus service, and a private advertising company which serviced the Transit District's buses. The buses contained advertising space above the passengers' seats, and the Transit District leased that space to the advertising company which, in turn, re-leased it to private commercial advertisers. (The parallel with FCC licensing of public property to private licensees who re-lease that frequency space to commercial advertisers is obvious.) In 1964, Women for Peace requested that it be allowed to place the following advertisement in defendants' coaches, at the standard rate:

> "Mankind must put an end to war or war will put an end to mankind."
>
> President John F. Kennedy.
>
> Write to President Johnson: Negotiate Vietnam.
> Women for Peace
> P. O. Box 944, Berkeley."

Defendants refused to accept the advertisement, on the ground that the advertisement conflicted with the District's advertising policy:

> The . . . District . . . accepts only commercial advertising for the sale of goods and services, except that political advertising will be accepted in connection with and at the time of a duly called election being held within the boundarys of the District, and further subject to the conditions that . . . space be made equally available to opposing candidates or sides of a ballot measure.

The advertisement in question was rejected on the ground that "controversial subjects" were not consistent with this policy. (Again, the parallels with WTOP-AM's policy, as well as the Commission's equal time doctrine, are obvious.)

The court first asserted that the content of the advertisement was "undeniably protected by the First Amendment," despite its status as a paid message, 434 P. 2d at 984. It then observed that the advertisements in question could not conceivably interfere with the District's primary function of providing transportation. 434 P. 2d at 985. And the court then defined the problem as one "in which a governmental agency [the parallel to WTOP-AM has been made in the previous section] has refused to accept an advertisement expressing ideas admittedly protected by the First Amendment for display in a forum which the agency has deemed suitable for the expression of ideas through the medium of paid advertisements." 434 P. 2d at 985. The court concluded:

> [D]efendants, *having opened a forum* for the expression of ideas by providing facilities for advertisements on its buses, *cannot* for reasons of administrative convenience decline to accept advertisements expressing opinions and beliefs within the ambit of First Amendment protection.

434 P. 2d at 985 (emphasis supplied). The "vice" of the district's censorship lay in choosing "between classes of ideas . . . , sanctioning the expression of only those selected, and banning all others." This the court described as "a most pervasive form of censorship." 434 P. 2d at 986.

The court also expressed itself with absolute bluntness on the perversity of elevating commercial speech to a status more important than political speech. "[I]n the totality of man's communicable knowledge," the court said, "that which bears no relationship to material value preponderates." 434 P. 2d at 986. The court observed:

> A cigarette company is permitted to advertise the desirability of smoking its brand, but a cancer society is not entitled to caution by advertisements

> that cigarette smoking is injurious to health. A theater may advertise a motion picture that portrays sex and violence, but the Legion of Decency has no right to post a message calling for clean films. A lumber company may advertise its wood products, but a conservation group cannot implore citizens to write to the President or Governor about protecting our natural resources, An oil refinery may advertise its products, but a citizens' organization cannot demand enforcement of existing air pollution statutes.

434 P. 2d at 986-87.

Finally, the court relied upon a companion case, *In re Hoffman*, 434 P. 2d 353 (Cal. 1967), to state the controlling issue before it: "the test is not whether petitioners' use of the station was a railway use, but whether it *interfered* with that use." 434 P. 2d at 356 (emphasis supplied). Because the bus company was unable to show that presentation of political commercials interferred with *any* legitimate function of its transportation function, its refusal to accept political advertising was impermissible.

The analogies to WTOP-AM are almost exact. WTOP-AM is, for purposes of the First Amendment, an "agent" of the state—just as was the private advertising agency leasing "public property" from the transit authority. WTOP-AM rejected BEM's advertisement, also on the ground that it accepted only "commercial" advertising. There was no evidence that acceptance of the advertisement would "interfere" with WTOP-AM's normal function of presenting advertising space to sponsors and entertainment programming to listeners. One must conclude, therefore, that WTOP-AM cannot reject BEM's advertisements any more than the transit authority could reject those of the Women for Peace.

In *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 328 (S.D.N.Y. 1967), the court reached precisely the same result as in *Wirta*, and for identical reasons. There too an anti-war group wanted to place an advertisement on the walls of the subway; a private advertising corporation, operating under contract to the city, refused, due to the "controversial" nature of the views expressed.

The Transit Authority made two arguments. First, they argued that they only accepted commercial advertisements, public service announcements, and political advertising during elections—and that acceptance of these was not a generalized waiver to include political advertisements. The Court quickly rejected this argument, stating that the Authority and the Advertising Company "cannot accept some posters and refuse the plaintiffs' for reasons that conflict with the First Amendment guarantee of the right to freedom of speech." 274 F. Supp. at 442. Second, the Transit Authority argued that the posters were inflammatory, would be displayed to a "captive audience," and might cause disorder and irritation. Again the court swiftly disposed of this argument. Citing *Terminiello* v. *City of Chicago*, 337 U.S. 1, 4 (1949), the court said:

> [A] function of free speech . . . is to invite dispute . . . . Speech if often provocative and challenging. It may . . . have profound unsettling effects. . . . That is why freedom of speech is . . . protected against censorship. . . .

The parallel with the case involving WTOP-AM again is obvious.

In *Zucker* v. *Panitz*, 299 F. Supp. 102 (S.D.N.Y. 1969), a group of high school students brought an action for declaratory and injunctive relief to compel a high school newspaper to accept a paid advertisement in opposition to

the Vietnam war. The defendant school authority argued that the paper's policy was to accept "only purely commercial advertising" and to reject all advertising (even in support of student government nominees) which was politically oriented. Citing *Wirta*, the court ruled in the plaintiff's favor:

> Here, the school paper appears to have been open to free expression of ideas in the news and editorial columns as well as in letters to the editor. It is patently unfair in light of the free speech doctrine to close to the students the forum which they deem effective to present their ideas.

299 F. Supp. at 105. The court could see no disruption of the newspaper's normal function that could conceivably result from the anti-war advertisements.

Finally, in *Hillside Community Church, Inc. v. City of Tacoma*, 455 P. 2d 350 (Wash. 1969), a church group sought to place "end the war in Vietnam" posters on transit buses operated by the city of Tacoma, Washington, where advertising space was under the control of a private lessee advertising agency. Citing *Wirta and Kissinger*, the court ruled that "[o]nce a municipality or public body enters the field of advertising, therefore, the law requires that a showing of a 'clear and present' danger must be made in order to limit such advertising without conflicting with guarantees of freedom of speech under the First and Fourteenth Amendments." 455 P. 2d at 354. The court found the rejection to be "clear acts of censorship" in violation of plaintiff's first amendment rights.

The licensee has argued that subjects of the type contained in the BEM advertisements "require a more in-depth analysis than can be provided in a 10, 20, 30, or 60 second announcement." It seeks to use this pathetically weak justification to overcome the Supreme Court's "clear and present danger" test, see *Hillside*, *supra*, and the

First Amendment to the Constitution. This reasoning must be rejected out of hand. Once WTOP-AM has opened its forum up to 10, 20, 30, and 60 second commercial spots, it cannot withhold similar time periods from persons seeking to fill them with political speech. It borders on arrogance for WTOP-AM to assert that $4-5,000 automobiles which pollute the air and endanger human life may be sold to an unsuspecting public in 30 second spot announcements, but that the simple message, "End the War in Vietnam," cannot be communicated in a short announcement. Neither the government, nor a licensee, must be permitted to arrogate to itself the totalitarian role of deciding, *for the people wishing to speak*, how they will be permitted to present their thoughts. Similarly harsh and unjustifiable restrictions have been struck down in many other related cases, and I need not detail their reasoning here. See, *e.g.*, *Wolen* v. *Port of New York Authority*, 392 F. 2d 83 (2d Cir. 1968); *Tanner* v. *Lloyd Corp.*, 308 F. Supp. 128 (D. Ore. 1970); *In re Lane*, 457 P.2d 561 (Cal. 1969); *People* v. *St. Clair*, 288 N.Y.S. 2d 388 (Crim. Ct. 1968); *In re Hoffman*, 434 P.2d 353 (Cal. 1967); *Schwartz-Torrance Inv. Corp.* v. *Bakery & Con. Wkrs. U.*, 394 P.2d 921 (Cal. 1964).

The argument has been made that if WTOP-AM is forced to accept political advertisements, then commercial space will become limited. These arguments have also been considered by the courts, and summarily rejected. In *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 328 (S.D.N.Y. 1967), the court remarked:

> Defendants also argue that if they accept the posters for display, they will have to accept other posters relating to [political issues] . . . with the result that commercial advertising will become curtailed and the subways will become a political and ideological battlefield. Even if the Authority and

> the Advertising Company are required to accept the posters for display, however, it does not follow that others must be accepted. . . . [T]he Authority and the Advertising Company could impose reasonable regulations on the display of plaintiffs' posters and others of a similar nature as to the number to be displayed and the time and place for their display.

See also, *Farmer* v. *Moses*, 232 F. Supp. 154 (S.D.N.Y. 1964); *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P.2d 982 (Cal. 1967). Access to WTOP-AM's facilities for a "reasonable" number of political advertisements need not open the floodgates to a limitless political battleground—although in many respects this might be preferable to the existing commercial wasteland we see spread out before us today. Nothing would prevent the licensee or the Commission from adopting "reasonable" limitations on the number of both commercial and political advertisements to be broadcast.

Perhaps not surprisingly, the Commission has adopted precisely such an approach in prior cases. In *United Broadcasting Co. (WHKG)*, 10 F.C.C. 515 (1945), for example, a labor union filed a complaint against a licensee for refusing to sell the union time to solicit memberships and discuss controversial subjects (such as "race, religion, and politics"). The Commission designated the station's license renewal for hearing to determine "*the duties* of a licensee . . . to maintain an overall program balance by providing time on a nondiscriminatory basis for discussion of public controversial issues and for the solicitation of memberships for nonprofit organizations." *Id.* at 517 (emphasis supplied). During the hearing, it developed that the station's policies were governed by the Code of the National Association of Broadcasters. The Code provided that "no time shall be sold for the presentation of public controversial issues, with the exception of political broadcasts . . ., and that solicitation of mem-

berships in organizations, whether on paid or free time, should not be permitted except for charitable organizations, such as the American Red Cross. . . ." *Id.* at 516. Following the hearing, both parties filed a joint motion, stating that the licensee had adopted a new policy, and asking for dismissal of the proceedings. The new policy stated, in pertinent part:

> (a) . . . Station WHKC [will] . . . consider each request for time solely on its individual merits without discriminations and without prejudice because of the identity of the personality of the individual, corporation, or organization desiring such time.
>
> (b) Requests . . . will . . . be considered in the light of the contribution which their use of time would make toward a well-balanced program schedule. . . .
>
> (c) Station WHKC will make time available, primarily on a sustaining basis, *but also on a commercial basis*, for the full and free discussion of issues of public importance, including controversial issues, and dramatizations thereof. . . . [T]here will be *no discrimination between business concerns and nonprofit organizations*. . . . Nonprofit organizations will have the right to purchase time for solicitation of memberships.
>
> * * * *
>
> (e) The censorship of scripts is an evil repugnant to the American tradition of free speech and a free press, whether enforced by a Government agency or by a private radio station licensee. . . . Station WHKC will not censor scripts, or delete any matter contained in them. . . .
>
> (f) The station will see that its broadcasts on controversial issues . . . maintain a fair balance among the various points of view . . ., both sustaining and commercial alike.

> The parties believe that the above statement of policy properly sets forth *the duties* of a licensee under the Communications Act of 1934. . . .

United Broadcasting Co. (WHKC), supra at 516-17 (emphasis supplied).

The Commission, on the basis of this newly adopted policy statement, dismissed the proceedings. Stating that the policy was "fair and nondiscriminatory," *id.* at 518, we said:

> The Commission . . . is of the opinion that the operation of any station under the *extreme principles that no time shall be sold for the discussion of controversial public issues* and that only charitable organizations and certain commercial interests may solicit memberships is inconsistent with the concept of public interest established by the Communications Act as the criterion of radio regulations. . . . The Commission recognizes that good program balance may not permit the sale or donation of time to all who may seek it for such purposes and that difficult problems calling for careful judgment on the part of station management may be involved in deciding among applicants for time when all cannot be accommodated. However, competent management should be able to meet such problems in the public interest and with fairness to all concerned. The fact that it places an arduous task on management should not be made a reason for evading the issue by a *strict rule against the sale of time for any programs of the type mentioned.*

Id. at 518 (emphasis supplied).

The point is simply that the Commission has previously ruled that this policy comports with the "*duties*" of a licensee, and that refusals to sell time for the discussion of controversial issues of public importance would violate the 1934 Communications Act. The Commission clearly

stated that a "strict rule" against the sale of such time would be "extreme," and that "competent management" should be able to preserve balance and fairness between applicants. BEM asks for no more here. That this Commission has retrogressed in the 25 years since its *WHKC* opinion is a sad commentary indeed.

IV. SECTION 3(H) AND "COMMON CARRIERS"

Section 3(h) of the 1934 Communications Act provides, in rather uninformative fashion:

> "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy . . .; *but a person engaged in radio broadcasting shall not insofar as such person is so engaged, be deemed a common carrier.*

47 U.S.C. 153(h) (1964) (emphasis supplied). The majority has seized upon this general language to argue that a licensee has the power categorically to reject *all* requests by politically-oriented groups to purchase time. According to the majority, "[i]f the licensee were deemed to be a common carrier, . . . the result would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt." There are a number of reasons why this argument is faulty.

First, it is interesting to note that the Commission itself has rejected this argument in prior cases. In *United Broadcasting Co. (WHKG)*, 10 F.C.C. 515 (1945), for example, discussed above, the Commission clearly stated that Section 3(h) of the Act in no way interferred with the "duty" of licensees to make a reasonable amount of time available for purchase or on a sustaining basis to persons wishing to discuss issues of controversy and public importance:

> It is recognized, of course, that the physical limitations on the amount of spectrum space available for radio broadcasting and the large demands upon radio stations for use of time make it impossible for every person desiring to use the facilities of a station to be granted this privilege. Under section 3(h) of the act, broadcast stations are expressly declared not to be common carriers. These facts, however, in no way impinge upon the duty of each station licensee to be sensitive to the problems of public concern in the community *and to make sufficient time available, on a nondiscriminatory basis, for full discussion thereof, without any type of censorship which would undertake to impose the views of the licensee upon the material to be broadcast.* The spirit of the Communications Act of 1934 requires radio to be an instrument of free speech, subject only to the general statutory provisions imposing upon the licensee the responsibility of operating its station in the public interest.

Id. at 517-18 (emphasis supplied).

Second, it seems clear, at least from the cited passage, that Section 3(h), whatever its function, was not designed to permit licensees flatly to reject advertisements for non-commercial or controversial causes. It seems likely that Congress, in enacting Section 3(h), intended only to make the rather detailed and complicated "Common Carrier" provisions in Title II of the 1934 Act inapplicable to broadcasting. A right of reasonable access, sought here by BEM, would certainly be consistent with the principles enunciated in *United Broadcasting Co. (WHKC), supra,* without involving Title II of the Act. Obviously, even under the access principles sought by BEM a licensee would not be forced to take *everyone* who sought air time. After all, a licensee may not have enough airtime or frequency space available to accommodate all those wishing to advertise. But it does not fol-

low, either, that a licensee can *exclude* everyone who seeks access. There are many ways of permitting reasonable access by non-commercial advertisers without having to accept them all. Licensees, for example, might decide to accept 50% commercial and 50% non-commercial advertising. In each category, some might be turned away—for any number of reasons. But the broadcaster would still be obligated to maintain an adequate "balance" between viewpoints for purposes of the fairness doctrine. And we have already ruled that "competent management should be able to meet such problems in the public interest." *United Broadcasting Co. (WHKC)*, 10 F.C.C. 515, 518 (1945). This principle was underscored by the court in *Office of Communication of United Church of Christ* v. *FCC*, 359 F.2d 994 (D.C. Cir. 1966), when it said:

> The argument that a broadcaster is not a public utility is beside the point. True it is not a public utility in the same sense as strictly regulated common carriers or purveyors of power, but neither is it a purely private enterprise like a newspaper or an automobile agency.

Id. at 1003.

A third defect in the majority's reasoning is that the Commission itself has, on several occasions, limited the discretion of licensees to accept or reject persons wishing to use their facility to express views. *In Letter to Nicholas Zapple*, FCC 70-598 (1970), for example, we ruled that when a spokesman for a political candidate appears in support of that candidate over a radio or television station, then, even though the equal time requirements of Section 315(a) of the Communications Act are inapplicable, the licensee *must* nevertheless give equal opportunities to supporters of the opposing candidate. Such opposing supporters would not only be the "appropriate" and "logical" persons to reply, but as we stated, "it would

not be reasonable" for a licensee to refuse such a spokesman time. In 1968, on another occasion, we stated that under certain circumstances the fairness doctrine would require a licensee to put on one particular person—where "[t]here is a clear and appropriate spokesman to present the other side of the attack issue—the person or group attacked." *Memorandum Opinion and Order*, 12 F.C.C. 2d 250, 252-53 (1968).

The point is simply that these requirements do not violate Section 3(h) of the Act, even if they do require a licensee to accept the programming offered by a specific person. A system of reasonable access is perfectly consistent with Section 3(h) of the Act. Not only that, it is *required* by the First Amendment under the principles described above. The principles and policies of the First Amendment do not dictate the amount of non-commercial advertising licensees must accept. They require only that licensees must accept *some* non-commercial advertising, and that the amount accepted must be *reasonable.*

CONCLUSION

In sum, BEM's advertisements are protected speech under the First Amendment; WTOP-AM's actions in rejecting the advertisements subject it, under concepts of state action, to the restraints and policies of that Amendment; WTOP-AM has presented no reasonable justification for its discrimination between commercial and non-commercial advertising; and Section 3(h) of the Communications Act is perfectly consistent with procedures permitting a right of reasonable access to the broadcasting media for political advertisements.

Accordingly, I would grant the petitioners' request and enforce their demand for access to the public facilities guarded so zealously by the licensee. This the majority has refused to do. I dissent.

V

Relevant Pleadings Before the United States Court of Appeals (D.C. Cir.) in *Democratic National Committee* v. *Federal Communications Commission*, No. 24,537

and

Business Executives' Move for Vietnam Peace v. *Federal Communications Commission*, No. 24,492

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,
v.
FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

PETITION FOR REVIEW

The Democratic National Committee hereby petitions the Court for review, pursuant to Section 402(a) of the Communications Act of 1934, 47 U.S.C. § 402(a), and 28 U.S.C. § 2344, of the Memorandum Opinion and Order of the Federal Communications Commission released August 12, 1970 (FCC 70-861), a copy of which is annexed hereto.

Respectfully submitted,

DEMOCRATIC NATIONAL COMMITTEE

By _____

JOSEPH A. CALIFANO, JR.
DAVID H. LLOYD
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Its Attorneys

August 13, 1970

[Certificate of service omitted in printing]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24492

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA,
Respondents.

AMENDED PETITION FOR REVIEW OF COMMISSION ACTION AND FOR TEMPORARY RELIEF

This amended petition seeks an order setting aside the Federal Communications Commission's action denying petitioners' complaint and seeks temporary relief pending action by the Commission. A copy of the Commission's action, dated August 5, 1970, was filed herein by the Respondent Commission on August 14, 1970.

I. *Jurisdiction and Venue*

1. This Court has jurisdiction under the Communications Act of 1934, as amended, 47 U.S.C. § 402(a); the Judicial Review Act, 28 U.S.C. § 2342-2343; and the Administrative Procedure Act, 5 U.S.C. §§ 704-706. Venue in this Court is proper under 28 U.S.C. 2343.

II. *Parties*

2. Petitioner Business Executives' Move for Vietnam Peace ("BEM") is an organization composed of over 3,000 business executives and owners from 49 states. It maintains offices in Baltimore, Maryland, and at 201 Massachusetts Avenue, N.E., Washington, D.C. 20002.

3. Respondent Federal Communications Commission ("FCC" or "the Commission") is an agency of the United States government. The United States of America is named as a Respondent pursuant to 28 U.S.C. 2344.

III. *Facts*

4. On January 22, 1970, BEM filed a Letter of Complaint against radio station WTOP with the Commission's Broadcast Bureau, Complaints and Compliance Division. A copy of the Complaint is attached as Exhibit A to the original petition filed in this action. The Complaint asserted that WTOP's refusal to sell air time to BEM for broadcast of certain advertisements expressing views in opposition to the Vietnam war violates the Commission's "Fairness Doctrine," provisions of the Communications Act, and the First Amendment to the United States Constitution. BEM requested that the Commission order WTOP to provide BEM with free air time to broadcast its views or, in the alternative, sell such time to BEM at prevailing rates. BEM requested expedited processing of its complaint to assure that its "announcements reach the air at their most propitious time." BEM stated that "the Vietnam War is a current and changing issue. Each day that WTOP denies air time to BEM's announcements, BEM is denied the opportunity to broadcast its views in a timely way." (Ex. A, p. 5).

5. WTOP filed a response to BEM's complaint on February 5, 1970; BEM filed a reply on February 16, 1970; and, on February 19, 1970, BEM by letter to the Chief of the Commission's Complaints and Compliance Division, requested that the matter be referred directly to the full Commission, again emphasizing the need for expedited action and requesting that the Commission rule within three weeks. Other filings were made by the parties, the last of which was filed with the Commission on

April 7, 1970. Two months later, having received no ruling from the Commission, BEM's counsel, by letter to the Commission's chairman dated June 10, 1970 (with copies to all Commissioners and to the Chief of the Commission's Complaints Division), requested an immediate Commission ruling on its Complaint. This letter once again emphasized the fundamental and irretrievable nature of the First Amendments rights in issue. After further requests by BEM for expedited action met with no success, the original petition was filed in this action on July 31, 1970.

6. One week after the filing of the petition herein, the Commission announced that it had reached a decision and, on August 14, 1970, mailed copies of its action and concurring and dissenting statements to BEM and to the clerk of this Court.

7. The majority of the Commission rejected BEM's claims made under The Fairness Doctrine, The Communications Act and The First Amendment. Commissioner Johnson, dissenting, would grant BEM's complaint on First Amendment grounds and direct WTOP to sell BEM airtime on which to broadcast editorial advertisements. A copy of Commissioner Johnson's dissent is attached to BEM's Motion to Amend filed herein on August 20, 1970.

8. The Commission's denial of BEM's complaint is not in accordance with law, is not substantiated by substantial evidence, and is contrary to the First Amendment to the United States Constitution.

9. The denial of BEM's complaint by the Commission has caused, and the absence of a preliminary injunction by this Court ordering the Commission to direct WTOP to sell BEM airtime at its prevailing rates pending disposition of this Petition will cause irreparable injury to petitioner BEM and to the public.

WHEREFORE, petitioner prays that this Court:

1. Review and reverse the order of the Federal Communications Commission;

2. Suspend its Rules to order an immediate hearing on the Motion for Temporary Relief;

3. Preliminarily order respondent FCC to direct its licensee WTOP to sell BEM reasonable air time for the broadcasting of its views on the Vietnam War;

4. Retain jurisdiction over the parties to assure that respondent FCC complies with the order or writ of this Court and the applicable provisions of law;

5. Assess all taxable costs to respondents;

6. Provide for expeditious disposition of this matter; and

7. Grant Petitioner such other and further relief as may be appropriate.

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/s/ Michael Schneiderman
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/s/ Albert H. Kramer
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

MOTION FOR LEAVE TO INTERVENE

American Broadcasting Companies, Inc. (ABC), by its attorneys, pursuant to 28 U.S.C. Sec. 2348 and Rule 15 (d) of the Federal Rules of Appellate Procedure, hereby moves to intervene in the above-referenced proceeding:

1. The Democratic National Committee has petitioned for review of a Memorandum Opinion and Order of the Federal Communications Commission released August 12, 1970 (FCC 70-861).

2. ABC was a party to the proceeding of which review is there sought. It operates nationwide radio and television networks, and holds broadcast licenses issued by the Federal Communications Commission. ABC thus will be affected if the aforesaid Order is enjoined, set aside, or suspended. Therefore, ABC is entitled to appear (intervene) as a party of its own motion and as of right in this proceeding under 28 U.S.C. Sec. 2348.

WHEREFORE, ABC respectfully requests that this Motion for Leave to Intervene be granted.

Respectfully submitted,

/s/ James A. McKenna, Jr.
JAMES A. MCKENNA, JR.

/s/ Vernon L. Wilkinson
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August 27, 1970

[Certificate of service omitted in printing]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

File No. 24537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA,
Respondents.

MOTION FOR LEAVE TO INTERVENE

Columbia Broadcasting System, Inc. respectfully moves for leave to intervene in the above-entitled proceeding. In support thereof, it shows as follows:

1. Columbia Broadcasting System, Inc. is the licensee of five television stations, seven standard (AM) radio stations, and seven FM radio stations.

2. The above-entitled proceeding is a petition for review of an order of the Federal Communications Commission (FCC) released August 12, 1970, FCC Release No. 70-861, denying in part Petitioner's request for a declaratory ruling that a broadcast licensee may not refuse to sell time to any "responsible entity" for the solicitation of funds or for comment on public issues.

3. The Petitioner apparently seeks herein to have the aforementioned order of the Commission set aside or modified in some respect.

4. Columbia Broadcasting System, Inc. was a party to the proceeding before the Commission leading to issuance of the order sought to be reviewed herein. Its freedom to select broadcast programming would be substan-

tially restricted by a grant of the relief which Petitioner requested before the Commission, thus affecting its interests as a broadcast licensee. It is therefore entitled as of right to intervene in this proceeding pursuant to 28 U.S.C. § 2348.

WHEREFORE, the Columbia Broadcasting System, Inc. pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, respectfully moves this Court for leave to intervene and be made a party to the above-entitled proceeding for all purposes.

/s/ J. Roger Wollenberg
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August 31, 1970

[Certificate of service omitted in printing]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24492

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

MOTION FOR LEAVE TO INTERVENE

Post-Newsweek Stations, Capital Area, Inc., licensee of standard broadcast station WTOP (hereafter "WTOP"), moves for leave to intervene in this proceeding. In support of this motion, the following is shown:

1. By order dated September 11, 1970, this Court granted leave to petitioner to amend a document previously on file with the Court and directed the Clerk to file the document so amended as a petition for review.

2. This proceeding involves review of a decision of the Federal Communications Commission, dated August 5, 1970, denying petitioner's request for a ruling that WTOP had violated the Commission's Fairness Doctrine in its coverage of the Vietnam War issue and that petitioner was entitled to have its announcements carried by WTOP. WTOP participated in the proceeding below.

3. The relief here requested by petitioner relates directly to the operation of radio station WTOP. Thus, WTOP could be materially affected by the decision in this case. The position of WTOP will not be fully represented by any other party to this proceeding.

4. Counsel for petitioner and for respondents have authorized the undersigned to state that they have no objection to the immediate consideration and grant of this motion.

Respectfully submitted,

/s/ Ernest W. Jennes
ERNEST W. JENNES

/s/ Charles A. Miller
CHARLES A. MILLER
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Counsel for
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Capital Area, Inc.

September 23, 1970

[Certificate of service omitted in printing]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING COMPANIES, INC.,
and COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenors.

MOTION TO SET CASE FOR ARGUMENT WITH RELATED CASE

Columbia Broadcasting System, Inc. (CBS), intervenor in the above-captioned case, hereby respectfully moves this Court to set the case for argument immediately preceding or following the argument in *Business Executives Move for Vietnam Peace* v. *FCC*, No. 24,492 (currently scheduled for argument on March 9, 1971) and before the same division of the Court. In support thereof, CBS states as follows:

1. The Commission's rulings in the two cases in question were issued on the same day, and involve closely related issues. In its ruling on review in this case, the Commission held that broadcast licensees are not required to sell time to political parties and other "responsible entities" for the discussion of controversial issues. *Democratic National Committee*, 24 F.C.C.2d 216 (1970). In its ruling on review in No. 24,492, the Commission held that a particular licensee was not required to sell

time for spot announcements presenting views on controversial public issues. *Business Executives Move for Vietnam Peace*, 24 F.C.C.2d 242 (1970). In that latter ruling, the Commission expressly relied on its holding in the *Democratic National Committee* case. 25 F.C.C.2d at 247. Moreover, petitioner in No. 24,492 itself brought to this Court's attention the fact that the Commission's decision on review in this case had been treated by the Commission as a "companion case," and included that opinion in the Appendix filed in No. 24,492. See Brief for Petitioner in No. 24,492, p. 2.

2. While the two cases arose in different factual settings and should not be consolidated, they involve common and related issues of law of great importance to the administration of the Communications Act of 1934. It is therefore appropriate that they be heard and decided by a single division of this Court.

3. Under the present briefing schedule, all briefs in No. 24,537 will be filed before March 9, 1971.

Respectfully submitted,

/s/ Timothy B. Dyk
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Counsel for
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System, Inc.

February 9, 1971

[Certificate of service omitted in printing]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING COMPANIES, INC.,
and COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenors.

OPPOSITION TO ANY FURTHER DELAY IN NO. 24,492

On February 9, 1971, the Columbia Broadcasting System, Inc. (CBS), intervenor in *Democratic National Committee* v. *F.C.C.*, No. 24,537, filed a motion to have their case set for argument concurrently with the above-captioned case which has been set, pursuant to expedited scheduling, for argument on March 9, 1971. Although Business Executives Move for Vietnam Peace (BEM) takes no position on when oral argument is set in No. 24,537, BEM strenuously opposes any change in the scheduled date of its argument for the following reasons:

1. On January 22, 1971, BEM filed a letter of complaint against radio station WTOP with the Federal Communications Commission. The complaint alleged violation of BEM's right to speak in contravention of the First Amendment. Responsive pleadings followed, but the Com-

mission, despite repeated requests for expedited action, had failed to resolve the matter by July 31, 1970. On that date, in an exasperated appeal for action, BEM filed a petition in this Court for "Review of Commission Inaction Equivalent to an Order Denying Relief and for Temporary Relief".

2. On August 5, 1970, in a letter-opinion to Counsel for BEM, the F.C.C. denied BEM's requested relief, *Business Executives Move for Vietnam Peace*, 25 F.C.C. 2d 242 (1970).

3. On August 20, 1970 BEM filed an "Amended Petition for Review of Commission Action and for Temporary Relief" praying again for expedited action in view of the irreparable injury being caused BEM and the public.

4. On September 29, this Court denied BEM's request for Temporary Relief but ordered Counsel for the parties to agree upon an expedited briefing schedule. On October 20, 1970, by order of Court, an expedited briefing schedule was set.

5. All briefs having been filed by January 25, 1971, the Court, pursuant to the expedited scheduling of this proceeding, set oral argument for March 9, 1971.

6. BEM has repeatedly contended that continued delays have caused irreparable injury both to themselves and to the public. Consequently, BEM has sought expedited actions throughout these proceedings.

7. BEM is currently awaiting resolution of matters which are denying their fundamental First Amendment rights. As these issues await Court action, the Indochina conflict is escalating and effective opposition to the war has been silenced.

8. BEM is opposed, therefore, to any action which will cause any further delay in either the argument or decision in its case.

Respectfully submitted,

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/s/ Albert H. Kramer
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Of Counsel:
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February 10, 1971

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING COMPANIES, INC.,
COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenors.

RESPONSE TO MOTION CONCERNING ORAL ARGUMENT

Respondent Federal Communications Commission takes no position with respect to the request of CBS that oral argument in this case be heard by the same panel on the same day as the argument in Case No. 24,492,[1] presently scheduled for March 9, 1971. However, in considering that request, which is premised on the fact that similar questions of law may arise in the two cases, we believe that the Court should be aware of the further fact that the same or related legal questions are also presented by a number of other appeals now pending in various procedural postures. These appeals include *Friends of the Earth and Gary A. Soucie* v. *F.C.C. and U.S.A.*, Case No. 24,556; *David Green, Individually and as Chairman of the Peace Committee of the Baltimore Meetings of the Religious Society of Friends* v. *F.C.C.*

[1] *Business Executives' Move for Vietnam Peace* v. *F.C.C. and U.S.A. (BEM).*

and U.S.A., Case No. 24,470; *G.I. Association, Stephen P. Pizzo, individually and behalf of the G.I. Association, Women For Peace, Hazel Grossman, individually and behalf of the Women for Peace, the Resistance, Lowell Turner, individually and behalf of the Resistance* v. *F.C.C. and U.S.A.*, Case No. 24,516; *Business Executives Move for Vietnam Peace, Los Angeles Chapter* v. *F.C.C. and U.S.A.*, Case No. 24,701. In this connection it is perhaps also noteworthy that while the instant appeal is from a declaratory ruling on what is a relatively pure legal question, all of the other cases, including *BEM*, arose in the context of various actions taken on different and unique facts, and in that sense bear a closer relationship to each other than does any one to the present case.

Respectfully submitted,

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February 16, 1971

[Certificate of service omitted in printing]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING COMPANIES, INC.,
and COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenors.

REPLY TO FCC'S RESPONSE TO MOTION TO SET CASE FOR ARGUMENT WITH RELATED CASE

On February 9, 1971, Columbia Broadcasting System, Inc. (CBS), intervenor in the above-captioned case, moved this Court to set the case for argument on the same day and before the same division of this Court scheduled to hear argument in *Business Executives Move for Vietnam Peace* v. *FCC*, No. 24,492, presently scheduled for argument on March 9, 1971. On February 16, 1971, the Federal Communications Commission (the Commission) filed a response to that motion, stating that it "takes no position" with respect to the motion. However, the Commission suggests that four additional cases pending before this Court involve "the same or related legal questions" as those presented in this case and No. 24,492, pointing to: *Friends of the Earth* v. *FCC*, No. 24,556; *Green* v. *FCC*, No. 24,470; *GI Association* v. *FCC*, No. 24,516; and *Business Executives Move for Vietnam Peace, Los Angeles Chapter* v. *FCC*, No. 24,701.

We suggest that the Commission has incorrectly characterized those cases. All involve petitions for review of Commission holdings with respect to the fairness doctrine. Thus, in No. 24,556, the question presented is whether commercial advertisements for automobiles and gasoline present one side of a controversial issue (pollution) requiring that the licensee present the opposing views of the petitioner. See the Commission's decision at 24 F.C.C.2d 743 (1970). In No. 24,470, the question is whether the broadcast of military recruiting messages presents one side of a controversial public issue requiring the licensees involved to present the opposing viewpoints of the petitioners. See the Commission's decision at 24 F.C.C.2d 171 (1970). The same basic fairness doctrine issue concerning military recruiting announcements is involved in No. 24,516. See the Commission's ruling at 24 F.C.C.2d 156 (1970). Finally, in No. 24,701, in which none of the briefs has yet been filed with this Court, petitioner is seeking review of the Commission's holding that equal time need not be provided to opponents of the President's views on the Indochina War immediately following every Presidential appearance on that subject. See the Commission's ruling at 25 F.C.C.2d 283, 294-98 (1970).

In the present case and in No. 24,492, on the other hand, the issue is not whether any licensees have violated the fairness doctrine but whether—apart from the fairness doctrine—there is a right under the First Amendment or the Communications Act for any particular individual or group to purchase broadcast time to present his or its particular views. It is this basic issue that is common to this case and No. 24,492, and that is not presented in any of the other cases cited by the Commission in its response to the CBS motion. And it is this basic common issue that makes it appropriate for a single

division of the Court to hear these two cases consecutively.

Respectfully submitted,

/s/ Timothy B. Dyk
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February 17, 1971

[Certificate of service omitted in printing]

VI.

Opinions and Orders
of the
United States Court of Appeals
(D.C. Cir.)
Democratic National Committee
v. *Federal Communications Commission*
No. 24,537

and

Business Executives Move for Vietnam Peace
v. *Federal Communications Commission*
No. 24,492

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1970

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
& UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING CO., INC.,
Intervenor,

COLUMBIA BROADCASTING SYSTEM, INC.
Intervenor.

Before: Bazelon, Chief Judge.

ORDER

On consideration of the motion of intervenor, Columbia Broadcasting System, Inc., to set case for argument with No. 24,492 and of the response, it is

ORDERED that the motion be granted and the above entitled case is hereby scheduled for argument on the merits at 10:00 a.m. March 9, 1971.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,492

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, RESPONDENTS
POST-NEWSWEEK STATIONS, CAPITAL AREA, INC., INTERVENOR

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, RESPONDENTS
AMERICAN BROADCASTING COMPANIES, INC. and COLUMBIA BROADCASTING SYSTEM, INC., INTERVENORS

Petitions for Review of Orders of the Federal Communications Commission

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Decided August 3, 1971

Mr. Thomas R. Asher, with whom *Messrs. Albert H. Kramer* and *Michael Schneiderman* were on the brief, for petitioner in No. 24,492.

Mr. Joseph A. Califano, Jr., with whom *Messrs. David H. Lloyd* and *Irvin B. Nathan* were on the brief, for petitioner in No. 24,537.

Mr. Daniel R. Ohlbaum, Deputy General Counsel, Federal Communications Commission, for respondents.

Messrs. John H. Conlin, Associate General Counsel, and *Stuart F. Feldstein*, Counsel, Federal Communications Commission, were on the brief for respondents in No. 24,492. *Mr. John H. Conlin* and *Miss Katrina Renouf*, Counsel, Federal Communications Commission, were on the brief for respondents in No. 24,537.

Mr. Henry Geller, General Counsel, Federal Communications Commission, at the time the record was filed, also entered an appearance for respondent Federal Communications Commission in No. 24,492.

Mr. Howard E. Shapiro, Attorney, Department of Justice, entered an appearance for respondent United States of America.

Mr. Ernest W. Jennes, with whom *Messrs. Charles A. Miller* and *Henry Goldberg* were on the brief, for intervenor in No. 24,492.

Mr. J. Roger Wollenberg, with whom *Messrs. Timothy B. Dyk* and *Daniel Marcus* were on the brief, for intervenor Columbia Broadcasting System, Inc. in No. 24,537.

Messrs. James A. McKenna, Jr. and *Vernon L. Wilkinson* were on the brief for intervenor American Broadcasting Companies, Inc. in No. 24,537.

Before WRIGHT, MCGOWAN and ROBINSON, *Circuit Judges.*

Opinion filed by WRIGHT, *Circuit Judge.*

Dissenting opinion filed by MCGOWAN, *Circuit Judge.*

WRIGHT, *Circuit Judge:* In these cases we are asked to decide whether a broadcast licensee may, as a general policy, refuse to sell any of its advertising time to groups or individuals wishing to speak out on controversial public issues. The Federal Communications Commission concluded that such a policy is permissible.[1] We reverse the Commission's decision. And we remand for further proceedings.

The principle at stake here is one of fundamental importance: it concerns the people's right to engage in and to hear vigorous public debate on the broadcast media. More specifically, it concerns the application of that right to the substantial portion of the broadcast day which is sold for advertising. For too long advertising has been considered a virtual free fire zone, largely ungoverned by regulatory guidelines. As a result, a cloying blandness and commercialism—sometimes said to be characteristic of radio and television as a whole—have found an especially effective outlet. We are convinced that the time has come for the Commission to cease abdicating responsibility over the uses of advertising time. Indeed, we are convinced that broadcast advertising has great potential for enlivening and enriching debate on public issues, rather than drugging it with an overdose of non-ideas and non-issues as is now the case.

Under attack here is an allegedly common practice in the broadcast industry—airing only those paid presentations which advertise products or which deal with "non-controversial" matters, and confining the discussion of controversial public issues to formats such as the news or documentaries which are tightly controlled and edited by the broadcaster. In the Comission's view, an attack on

[1] *Business Executives Move for Vietnam Peace*, 25 F.C.C.2d 242 (1970); *Democratic National Committee*, 25 F.C.C.2d 216 (1970).

the permissibility of this practice "goes to the heart of the system of broadcasting which has developed in this country." [2] We disagree. The actual issue before us is relatively narrow and we decide it narrowly. We do not have to cut to the "heart" of our system of broadcasting; we leave undisturbed the licensee's basic right to exercise judgment and control in public issue programming and the sale of advertising time. All we do is forbid an *extreme* form of control which totally excludes controversial public debate from broadcast advertising time.

We hold specifically that a flat ban on paid public issue announcements is in violation of the First Amendment, at least when other sorts of paid announcements are accepted. We do not hold, however, that the planned announcements of the petitioners—or, for that matter, of any other particular applicant for air time—must necessarily be accepted by broadcast licensees. Rather, we confine ourselves to invalidating the flat ban alone, leaving it up to the licensees and the Commission to develop and administer reasonable procedures and regulations determining which and how many "editorial advertisements" will be put on the air.

I

Both petitioners in these cases are organizations whose primary *modus operandi* is public persuasion and communication. As a rule, they do not attract attention to their views by performing newsworthy acts, such as engaging in civil disobedience or organizing mass demonstrations. They depend, instead, on their ability to get a hearing—as full as possible and as direct as possible—from the general public. Surely radio and television would seem to be the most effective media for their purposes. Yet

[2] *Democratic National Committee, supra* Note 1, 25 F.C.C.2d at 221.

they contend that their self-expression on those media—and, therefore, the public's access to their views—is significantly inhibited by broadcaster policies barring any and all paid editorial messages from the airwaves.

The Business Executives Move for Vietnam Peace (BEM) is a national organization of over 2,700 business owners and executives, organized in opposition to the war. BEM apparently believes that it is in a position to offer the public a unique viewpoint on what is no doubt one of the great political and moral issues of our time. In order to communicate that viewpoint, it prepared several recorded one-minute radio announcements. The announcements urged "immediate withdrawal of American forces from Vietnam and from other overseas military installations" and featured statements by leading businessmen and retired military officers whose views may carry particular weight with the general public. BEM sought to buy time to air these announcements on the broadcast media, just as commercial advertisers do. It must have seemed an extraordinarily effective means of directly communicating its ideas and sense of urgency to the broad listening audience.

In June 1969 BEM sought to purchase time for its announcements on WTOP, an all-news radio station in the nation's capital. Like most broadcasters, WTOP sells substantial amounts of time for short advertisements. Yet over a period of eight months it repeatedly refused to sell any time to the business executives. WTOP cited no particular objection to the planned announcements. Rather, it relied solely upon an across-the-board policy barring all editorial advertisements—"its long established policy of refusing to sell spot announcement time to individuals or groups to set forth views on controversial issues." [3]

[3] WTOP also stated "that 'subjects of this type require a more in-depth analysis than can be provided in a 10, 20, 30 or 60 second

BEM then filed a complaint with the Federal Communications Commission alleging violations of both the fairness doctrine and the First Amendment.

The Democratic National Committee (DNC) came to the Commission with much the same sort of complaint. It stated that it was in the process of planning an extensive media campaign to communicate the Democratic Party's views on crucial issues and to solicit funds. In our political system, it is of obvious importance that the public have access—as direct and full as possible—to the views of the political parties. A party currently out of office may well regard such communication as particularly vital. Yet DNC alleged that it confronted several obstacles to direct self-expression on the broadcast media, among them the refusal of some broadcasters to sell time for comment on controversial public issues. Unlike the business executives, DNC did not complain of any individual refusal to sell time for a particular editorial advertisement. Rather, it cast the issue in a somewhat different light by seeking a declaratory ruling from the Commission that "[a] broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as DNC, for the solicitation of funds and for comment on public issues."

The Commission considered the two cases together and rejected the arguments of both BEM and DNC on the same day. The issues involved did not overlap completely. For example, the Commission found a defect in the vagueness and generality of BEM's fairness doctrine com-

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announcement.'" *Business Executives Move for Vietnam Peace*, *supra* Note 1, 25 F.C.C.2d at 242. There is no indication, however, that WTOP's "long established policy" of refusing to sell time for *any* controversial advertisement would have permitted it to sell BEM 5 minutes or 10 minutes for a more "in-depth" treatment of its antiwar views. For a discussion of the permissibility of a flat ban on "short" public issue advertisements, *see* text at pages [Apps. 472-73] *infra*.

plaint,[4] and it resolved DNC's contention concerning fund solicitation by noting that all three television networks had agreed to accept such solicitations and by stating that any broadcaster policy of confining solicitations to election periods alone "would appear arbitrary."[5] On the matters central to these petitions for review, however, the Commission resolved both cases in the same fashion, and we, therefore, are also considering them as one.

The Commission held that it is permissible for a broadcast licensee to follow a general policy of rejecting all editorial advertisements. The essence of its reasoning in the two cases was as follows: First, it interpreted the fairness doctrine to allow rejection of paid controversial

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[4] In its original complaint, BEM alleged generally that WTOP had failed to cover antiwar views fully and fairly. However, it offered no specific proof whatever of its allegations, and WTOP, on the other hand, offered a lengthy compilation of news and interview shows which aired the opinions of some antiwar groups and individuals. BEM has not pressed its fairness doctrine argument on appeal, but rather has relied solely upon the First Amendment right-of-access contention which it also made before the Commission. Therefore, we need not consider here the Commission's holding that BEM failed to shoulder its full burden of going forward under the fairness doctrine.

[5] All three television networks also commented on the sale of time for editorial advertising. CBS stated it would sell no time for such advertising, although an exception would be made for broadcasts on behalf of political candidates or ballot propositions. ABC said it would not sell time to most groups for public issue advertising since that would inspire a "flood" of requests, but it would "be prepared, consistent with its other obligations, to accept such orders for time from major political parties as can be accommodated on a reasonable basis." And NBC stated it "has no policy which would prevent the purchase of program time envisioned by DNC." We are constrained to note here that any discrimination in the sale of editorial advertising time in favor of political parties alone or the "major" political parties—and totally excluding other more issue-oriented groups or "minor" political parties—would be highly suspect under the First Amendment. *See* text as pages [Apps. 477-79] *infra*.

announcements. The doctrine, evolved by the Commission and endorsed generally in the Communications Act, demands that all controversial issues of public importance be covered both fully and fairly by broadcasters. Yet the Commission held that it leaves the licensees broad leeway to exercise their professional judgment as to "the format for presentation of controversial issues 'and all other facets of such programming.'" Editorial advertising, the Commission said, is simply one of several possible formats for coverage of public issues. Under the permissive "reasonableness" standard of the fairness doctrine, acceptance of that particular format is by no means compulsory.

Second, the Commission interpreted the First Amendment to be equally permissive. Its reasoning on this point was rather sparse. It made no effort, for example, to identify the peculiar First Amendment interests attaching to paid editorial announcements as opposed to coverage of controversial issues on news, interview or discussion programs. Instead, it was content to raise the spectre of the "chaos" and other practical difficulties that, it said, would attend a right of access to the broadcast media. The Commission concluded that the fairness doctrine's requirement of full and fair coverage—tolerant as it is of a flat ban on the editorial advertisement format of expression—provides as much protection of public debate as the First Amendment demands.

Before this court, both petitioners make substantially the same attack on the Commission's decision. They do not ask for a ruling that *all* editorial advertisements submitted to broadcasters must be accepted. Nor do they seek to foreclose entirely the broadcasters' exercise of reasonable discretion. What they advocate is a *limited* right of access to radio and television for paid public issue announcements. They attack the Commission's ruling

that a total exclusion of such announcements is permissible.

II

Petitioners have left no stone unturned in their attack on the exclusion of editorial advertising. They have invoked the Communications Act's "public interest" requirement [6] and the statutory-regulatory fairness requirement [7]—as well as First Amendment principles—to support their argument. In other contexts, we might attempt to avoid the constitutional issue by coming to a decision on nonconstitutional grounds. But that course is neither fruitful nor possible here.

Speaking specifically of the Commission, the Supreme Court has stressed the "venerable principle that the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong." *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367, 381 (1969). Thus the nonconstitutional question here is whether there are "compelling indications" that the public interest and fairness requirements compel some opening for public issue advertisements on radio and television. In matters of allocating burdens, reforming procedures and ensuring full attention to all relevant factors in agency decision making, we have not been reluctant to reverse the Commission in order to vindicate "the public interest." [8] We have also intervened to see that broad policies developed by the Commission un-

[6] 47 U.S.C. §§ 307(d), 309(a) (1964).

[7] 47 U.S.C. § 315(a) (1964). For a discussion of the regulatory development of the fairness doctrine and its eventual adoption in the Communications Act, *see Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367, 375-381 (1969).

[8] *See, e.g., Office of Communication of United Church of Christ* v. *F.C.C.*, 123 U.S.App.D.C. 328, 359 F.2d 994 (1966); 138 U.S. App.D.C. 112, 425 F.2d 543 (1969).

der the fairness doctrine are applied fully and consistently to all cases.[9] However, when we are asked to reverse major substantive interpretations of the grand and open-ended statutory requirements, we tread somewhat more difficult terrain. Obviously, the requirements mean something and there must be a great range of actions which they foreclose to the Commission; but, in establishing the necessary guidelines, we must ourselves seek extrinsic guidance.

In these cases, that guidance comes from the Constitution. Petitioners have presented no "compelling" evidence from legislative history to indicate a congressional policy in favor of, or even a real congressional attention to, editorial advertising. Rather, their arguments on the nonconstitutional points closely parallel their constitutional arguments. The general policy considerations which they invoke encompass all of the interests that would have to be evaluated under the relevant First Amendment law. It would make no sense for us to blind ourselves to the constitutional status of those interests and to the doctrine that has been build up around them.

What then must be the "compelling indications" we are to consider? The ones which seem to us truly "compelling" involve First Amendment principles. Thus we conclude that the constitutional question must be faced and is, indeed, the essence of these cases. Whether our decision is styled as a "First Amendment decision" or as a decision interpreting the fairness and public interest requirements "in light of the First Amendment" matters little.

III

It has always been clear that the broadcast media—so vital to communication in our society—are affected by

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[9] *See, e.g., Retail Store Employees Union Local 880* v. *F.C.C.*, —— U.S.App.D.C. ——, 436 F.2d 248 (1970).

strong First Amendment interests.[10] Yet the nature of those interests has not been so clear; an evolution of constitutional principles in this area is still very much in progress. Until quite recently, the only interest raised to constitutional status was that of the broadcast licensees themselves. In a leading case, the Commission's powers over program content were attacked and upheld with reference solely to the licensees' right of immunity from governmental interference with their "speech." The scarcity of broadcast frequencies was said to justify some regulation trenching on the broadcasters' First Amendment interests. *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943). These cases mark a new effort by members of the public to assert *their* First Amendment interests in the operations of radio and television.

There is scant precedent for such an effort. Indeed, the few previous attempts by individuals or groups to enforce their First Amendment interests in court have failed. In each case, the litigants have run up against not only an unreceptiveness to their constitutional theory, but also a crabbed judicial view of "state action"—a view that the "[First] Amendment limits only the action of Congress or of agencies of the federal government and not private corporations such as [broadcast licensees]." *Massachusetts Universalist Convention* v. *Hildreth & Rogers Co.*, 1 Cir., 183 F.2d 497, 501 (1950); *McIntire* v. *Wm. Penn Broadcasting Co. of Philadelphia*, 3 Cir., 151 F.2d 597, 601 (1945). *See also Post* v. *Payton*, *E.D. N.Y.*, 323 F. Supp. 799 (1971).

We believe the path is now clear of such doctrinal impedimenta. Perhaps the most important recent develop-

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[10] *See, e.g., United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948). Congress itself has prohibited any interference by the Commission with "the right of free speech by means of radio communication." 47 U.S.C. § 326 (1964).

ment is the Supreme Court's seminal decision in *Red Lion Broadcasting Co., supra.* There the Court upheld another aspect of the Commission's regulation of program content —the fairness doctrine's personal attack and campaign editorial rules. However, the Court's opinion went well beyond the scarcity rationale of the *National Broadcasting Co.* case. It justified the Commission's interference with broadcasters' free speech by invoking specifically constitutional rights of the general public which, it said, underlie and support the fairness doctrine rules at issue. Issuing what must become a clarion call for a new public concern and activism regarding the broadcast media, the Court stated that "the people as a whole retain their * * * collective right to have the medium function consistently with the ends and purposes of the First Amendment." [11] It went on to say:

> "* * * The right of free speech of a broadcaster * * * does not embrace a right to snuff out the free speech of others. * * *
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> "* * * [A] licensee has no constitutional right * * * to monopolize a radio frequency to the exclusion of his fellow citizens. * * *
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> "* * * It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. * * *" [12]

Of course, the *Red Lion* Court had to invoke the public's First Amendment interests for a narrow purpose only—to uphold legislative and administrative action already taken. It did not have to reach the issue, presented in these cases, of invoking those interests for a direct

[11] 395 U.S. at 390.

[12] *Id.* at 387, 389, 390.

attack on broadcasters' policies approved by the Commission. However, the language used by the Court is significantly expansive. It spoke of a First Amendment "right" held by "the people as a whole." A constitutional "right" is hardly deserving of the name if it can function only to *permit* legislative and administrative action and if its content depends entirely upon the current policies of the legislative and executive branches. The First Amendment, after all, contains nothing analogous to the fifth section of the Fourteenth Amendment, authorizing Congress to enforce constitutional interests unenforceable by the Courts.[13]

For many purposes, it is proper to consider broadcast licensees as "private" businesses. Yet, for purposes of the First Amendment, "[o]wnership does not always mean absolute dominion." *Marsh* v. *Alabama*, 326 U.S. 501, 506 (1946). "Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action." *Evans* v. *Newton*, 382 U.S. 296, 299 (1966). The *Red Lion* Court itself commented on the impermissibility of "private censorship" and cited old doctrine that "'[f]reedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.'"[14] The reach of the First Amendment, therefore, depends not upon "public"—"private" technicalities, but upon more functional

[13] On the effect of the specific language in the fifth section of the Fourteenth Amendment, *see Oregon* v. *Mitchell*, 400 U.S. 112 (1970); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). Of course, the Fourteenth Amendment does not apply to federal regulation of the broadcast industry, since no interference with the states is involved.

[14] 395 U.S. at 392, quoting *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945).

considerations. They are (1) the governmental involvement in or public character of a particular enterprise, and (2) the importance or suitability of that enterprise for the communication of ideas.[15]

The last few decades of court decisions expanding the concept of "state action" have focused on myriad indicia of governmental involvement and public character. Many of them are apparently applicable to the operations of the broadcast industry.[16] But we need stress only two more basic factors which, taken together, bring broadcast licensees well within the ambit of the First Amendment for the purposes of these cases. First, the general characteristics of the broadcast industry reveal an extraord-

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[15] Most "state action" cases, of course, have been concerned with equal protection rights under the Fourteenth Amendment rather than with free speech rights under the First Amendment. However, the principle of governmental involvement developed therein has been applied equally well in the First Amendment context. *See, e.g., Public Utilities Comm'n* v. *Pollak*, 343 U.S. 451 (1952); *Farmer* v. *Moses*, S.D. N.Y., 232 F.Supp. 154 (1964). The principle of "public character" may be found in decisions dealing directly with application of First Amendment rights to "private" entities. *See., e.g., Marsh* v. *Alabama*, 326 U.S. 501 (1946); *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968); *Tanner* v. *Lloyd Corp., D. Ore.*, 308 F.Supp. 128 (1970); *Diamond* v. *Bland*, 91 Cal. Rptr. 501, 477 P.2d 733 (1970). The importance and suitability of a particular place for the communication of ideas has been stressed in all of the cases cited above, as well as in all of the access-to-public forum cases, *see* Notes 40-43 *infra*.

[16] Dissenting in the BEM case now under review, Commissioner Johnson dealt exhaustively with the Supreme Court's state action doctrine, isolating eight separate indicia of "state action." He argued very strongly that all eight indicia apply to broadcast licensees. *Business Executives Move for Vietnam Peace, supra* Note 1, 25 F.C.C.2d at 253-264. Because this highly analytical—one might say mechanical—approach runs the risk of reading Supreme Court opinions for more than they mean, we have chosen to paint with a broader brush. Ours is the approach which the Supreme Court seems in fact to have used in the past.

inary relationship between the broadcasters and the federal government—a relationship which puts that industry in a class with few others.[17] It is one of "interdependence" and "joint participa[tion]." *See Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 725 (1961). "[T]he [federal] regulatory system," it has been said, "is as much responsible for the existence of a broadcasting medium as the Bureau of Engraving is responsible for the existence of United States currency." [18] It has long been recognized that the airwaves are "a limited and valuable part of the public domain," [19] leased out temporarily by the federal government which retains ultimate control over them.[20] Federal agency review and

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[17] In particular, broadcasting may be easily distinguished from the newspaper industry in terms of "state action." In two recent decisions, courts have held that newspapers are not subject to the First Amendment. *Associates & Aldrich Co., Inc.* v. *Times Mirror Co.*, 9 Cir., 440 F.2d 133 (1971); *Chicago Joint Board* v. *Chicago Tribune Co.*, 7 Cir., —— F.2d ——, 39 U.S. L. WEEK 2360 (December 17, 1970). While the governmental involvement in and public character of newspapers in surely less than that of broadcasting, we of course need express neither agreement nor disagreement with the cited decisions here.

[18] Pemberton, *The Right of Access to Mass Media*, in N. DORSEN (ed.), THE RIGHTS OF AMERICANS 277, 290 (1971). The Government is also directly responsible for the very existence of particular broadcasters. "[E]xisting broadcasters have often attained their present position because of their initial government selection in competition with orders * * *. * * * [Their present] advantages are the fruit of a preferred position conferred by the Government." *Red Lion Broadcasting Co.* v. *F.C.C.*, *supra* Note 7, 395 U.S. at 400.

[19] *Office of Communication of United Church of Christ* v. *F.C.C.*, *supra* Note 8, 123 U.S.App.D.C. at 337, 359 F.2d at 1003.

[20] The licensing-out or delegation of governmental authority has been an element in some of the Supreme Court's most expansive state action decisions. *See Evans* v. *Newton*, 382 U.S. 296 (1966); *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Smith* v. *Allwright*, 321 U.S. 649 (1944). The mere existence of a licensing or delegation relationship is not, of course, enough by

guidance of broadcasters' conduct is automatic, continuing and pervasive.[21] For broadcast licensees are considered the "proxies" or "fiduciaries" of the people.[22] Almost no other private business—almost no other regulated private business—is so intimately bound to government and to service to the commonwealth.

A second and even more important factor is the *specific* governmental involvement in the broadcasters' action now under review here. All of the cases in which previous courts have characterized broadcasters as mere "private corporations" immune from First Amendment constraints, *see* text at page [App. 456] *supra*, have involved direct suits against broadcast licensees. In the cases before us now, however, the Commission has given its imprimatur to the flat ban on editorial advertising. It specifically considered and specifically authorized the flat ban. Thus we are called upon to review not simply a private decision, but a decision by a government agency, a decision which must inevitably provide guidance for future broadcaster action.

There is ample authority for the principle that specific governmental approval of or acquiescence in challenged

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itself to establish state action; licensed pharmacists cannot be equated with licensed broadcasters. The actual extent of governmental involvement and the public character of the enterprise in question remain the final tests of state action.

[21] The activities of a governmental regulatory agency have also been emphasized in at least one of the Supreme Court's expansive state action decisions. *See Public Utilities Comm'n* v. *Pollak*, *supra* Note 15, 343 U.S. at 462, *citing American Communications Ass'n* v. *Douds*, 339 U.S. 382, 401 (1950) ("[W]hen authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself.").

[22] *See Red Lion Broadcasting Co.* v. *F.C.C.*, *supra* Note 7, 395 U.S. at 394, 396; *Office of Communication of United Church of Christ* v. *F.C.C.*, *supra* Note 8, 123 U.S.App.D.C. at 337, 359 F.2d at 1003.

action by a private organization indicates "state action."[23] Indeed, in a case similar to ours the Supreme Court held that a private bus company franchised by the federal government and regulated by the District of Columbia Public Utilities Commission could be subject to First Amendment constraints. It emphasized the specific regulatory acquiescence in the challenged action of the bus company:

> "* * * In finding [state action] we do not rely on the mere fact that Capital Transit operates a public utility on the streets of the District of Columbia under authority of Congress. Nor do we rely upon the fact that, by reason of such federal authorization, Capital Transit now enjoys a substantial monopoly of street railway and bus transportation in the District of Columbia. We do, however, recognize that Capital Transit operates its service under the regulatory supervision of the Public Utilities Commission of the District of Columbia which is an agency authorized by Congress. We rely particularly upon the fact that that agency, pursuant to protests against the [challenged action], ordered an investigation of it and, after formal public hearing, ordered its investigation dismissed on the ground that the public safety, comfort and convenience were not impaired thereby. * * *"

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[23] The Supreme Court has said that "action of state courts and judicial officers in their official capacities is to be regarded as action of the State * * *." *Shelley* v. *Kraemer*, 334 U.S. 1, 14 (1948). *See New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); Van Alstyne, *Mr. Justice Black, Constitutional Review, and the Talisman of State Action*, 1965 DUKE L. J. 219, 227-230. *See also* this court's discussion of the *Shelley* principle—which surely must apply to actions of a federal administrative agency specifically approving private action—in *Edwards* v. *Habib*, 130 U.S.App.D.C. 126, 397 F.2d 687 (1968). Specific governmental acquiescence, as well as specific approval, has also been a focus of Supreme Court state action decisions. *See Marsh* v. *Alabama*, *supra* Note 15, 326 U.S. at 507 & n.4, 509; *Burton* v. *Wilmington Parking Authority*, *supra* Note 20, 365 U.S. at 725.

Public Utilities Commission v. *Pollak*, 343 U.S. 451, 462 (1952). (Footnote omitted.)

Broadcasting's importance and suitability for communication of ideas need not be labored. Mere presence of large and appropriate audiences (and thus opportunities for effective communication) has sometimes been emphasized by the courts to show the relevance of First Amendment protections.[24] In *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), for example, the Supreme Court held that a privately owned shopping center was an appropriate place for the "speech" of labor union picketers. It stressed "[t]he large-scale movement of the country's population from the cities to the suburbs [that] has been accompanied by the advent of the suburban shopping center * * *." *Id.* at 324. With this demographic change, the "speech" that once took place on the public streets around downtown shopping areas must be allowed to move to privately owned parking areas in the suburbs, for that is where the relevant audiences now are. The technological and cultural changes connected to the current preeminence of the broadcast media as our primary means of communication are no less striking. The soap box orator and the leafleter are becoming almost obsolescent; their Saturday afternoon audiences have increasingly moved indoors—in front of their television sets.[25]

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[24] *See, e.g., Wolin* v. *Port of New York Authority*, 2 Cir., 392 F.2d 83, 90-91 (1968) ("The propriety of a place for use as a public forum * * * [may be established if] the place is where the relevant audience may be found."). Of course, the cases before us involve the right to speak on a *medium* of communication, not in a particular *place*. Thus many of the considerations are different; but the basic concern with the ability to reach the relevant audience applies in both situations.

[25] The Supreme Court has noted that broadcast "technology * * * supplants atomized, relatively informal communication with mass

Moreover, unlike most of the private entities held to be subject to First Amendment constraints, the broadcast media are specifically dedicated to communication. They function as both our foremost forum for public speech and our most important educator of an informed people. In a populous democracy, the only means of truly mass communication must play an absolutely crucial role in the processes of self-government and free expression, so central to the First Amendment. That can be said of almost no other "private" enterprise.

IV

Broadcast licensees, then, serve not only as "speakers" but also as administrators of a highly valuable communications resource, subject to First Amendment constraints. Their dual role demands that their own constitutional interests in free speech coexist with those of the general public. But what are the dimensions of the public's First Amendment interests in the operation of radio and television? And how do they apply to the issue of editorial advertising?

It is particularly important that these cases deal only with the public's First Amendment interests in broadcasters' allocation of advertising time. They deal only with time relinquished by broadcasters to others; petitioners argue only that, in relinquishing that time, broadcasters must not discriminate against protected expression. In normal programming time, closely controlled and edited by broadcasters, the constellation of constitutional interests would be substantially different. In news and documentary presentations, for example, the broadcasters'

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media as a prime source of national cohesion and news * * *." *Red Lion Broadcasting Co.* v. *F.C.C.*, *supra* Note 7, 395 U.S. at 386 n.15.

own interests in free speech are very, very strong.[26] The Commission's fairness doctrine properly leaves licensees broad leeway for professional judgment in that area. But in the allocation of advertising time, the broadcasters have no such strong First Amendment interests. *Their* speech is not at issue; rather, all that is at issue is their decision as to which other parties will be given an opportunity to speak.

Though the broadcasters themselves have no substantial First Amendment interest in the allocation of advertising time, we might expect that the interest of members of the public—potential advertisers—would be quite strong. However, the Commission and the broadcaster-intervenors have argued just the opposite. They contend that the public's constitutional concerns do not extend to advertising time. Thus we must decide whether the substantial block of the broadcast day devoted to advertising is but a vacuum, devoid of First Amendment constraints, in the midst of a medium powerfully affected by those constraints—a desert in the midst of an oasis.

The Commission and intervenors work from the following premise. They define the public's overall constitutional interests in the operations of radio and television quite narrowly. The public's only interest, they suggest, is as viewers and listeners—not as speakers. They cite to us the *Red Lion* Court's mention of "the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences" over the broadcast media.[27] And they read that statement to set forth not only *an* interest of the public, but the *only* interest of the public.

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[26] *See id.* at 396.

[27] *Id.* at 390.

Working from that premise, the Commission and intervenors contend that the public already receives "suitable access" to controversial views on normal programming time. Application of the fairness doctrine's requirement of full and fair coverage of public issues in non-advertising time, they suggest, ensures that all views on these issues will in fact be presented. They assume that editorial advertising adds nothing new to the debate. The fairness guarantee alone, they say, is enough to eliminate petitioners' claim on advertising time—and enough to satisfy the First Amendment. We disagree.

Surely the public's interest in free access to the full spectrum of ideas and controversial views on radio and television is highly important. The right to receive ideas and information is deeply rooted in First Amendment law.[28] The *Red Lion* Court stressed that right, since it was the one primarily relevant to the fairness doctrine rules at issue in the case. But we do not believe that the *Red Lion* decision makes the goal of an informed public the exclusive First Amendment interest constraining broadcasters. Certainly the Supreme Court has done so in no other context.

The public has a First Amendment interest in the mode or manner—as well as the content—of public debate aired on the broadcast media. The *Red Lion* Court itself stated specifically that "[i]t is the purpose of the First Amendment to preserve an *uninhibited* marketplace of ideas [in the broadcast media]." [29] This court, simi-

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[28] *See Stanley* v. *Georgia*, 394 U.S. 557, 564 (1969); *Lamont* v. *Postmaster General*, 381 U.S. 301, 307-308 (1965) (Mr. Justice Brennan, concurring); *Martin* v. *City of Struthers*, 319 U.S. 141, 143 (1943). The "right to receive," however, has not been considered the central First Amendment interest, and never the only First Amendment interest.

[29] 395 U.S. at 390. (Emphasis added.)

larly, has said that the Commission is obliged to administer the airwaves "in such a manner that * * * debate on public issues is 'uninhibited, robust and wide-open.'" *National Ass'n of Theatre Owners* v. *F.C.C.*, 136 U.S. App.D.C. 352, 365, 420 F.2d 194, 207 (1969). The reference to "uninhibited" debate is, of course, borrowed from the Supreme Court's decision in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964). The Court there extended First Amendment protection to some forms of libel on public officials. It made clear that the Amendment's concern extends beyond the mere fostering of speech whose content will properly inform the public. The *New York Times* decision establishes a strong First Amendment interest in vigorous, "wide-open" public debate.

Furthermore, we must take note of a third—but, perhaps, most important—First Amendment interest. That is the interest of individuals and groups in effective self-expression. The *Red Lion* Court did say that "it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." [30] For, as it pointed out, broadcast time is necessarily limited. But the limited nature of broadcast time does not dictate that the individual and group interest in self-expression be brushed aside entirely; it allows for a reasonably regulated, "abridgeable" right to speak. The First Amendment values of individual self-fulfillment through expression and individual participation in public debate have long been recognized.[31] We all have an interest in speaking up ourselves as well as in hearing others. It is too late to argue that the First Amendment protects ideas but not an in-

[30] *Id.* at 388.

[31] *See, e.g.*, T. EMERSON, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT 4-7 (Vintage ed. 1967).

dividual's interest in expressing them and doing so in his own way.

We conclude, then, that the public's First Amendment interests constrain broadcasters not only to provide the full spectrum of viewpoints, but also to present them in an uninhibited, wide-open fashion and to provide opportunity for individual self-expression.[32] How do these three First Amendment interests relate to a more specific interest in the airing of editorial advertisements? The answer emerges when we understand the special importance of advertising time to our system of free expression. First, the initial decision to produce an editorial advertisement is in the hands of members of the public. The initiative to present a particular view does not have to come from a member of the broadcaster's staff. Second, a paid advertisement is basically controlled and edited by the advertiser. He is allowed to present his views in a fashion chosen by himself. If an individual is interviewed for a news program, he may expect his comments to be abbreviated and edited; reporters' commentary will qualify what he has to say. For it is the broadcasters' responsibility to be objective, to condense issues into available time for presentation, and to play up or play down views according to the *broadcaster's* opinion of what is important and interesting. But when an individual or group buys time to say its piece, the crucial controls are in its own hands. Editorial advertising is thus a special and

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[32] Of course, all three of these interests apply to non-advertising time as well as to advertising time. The Commission, in fact, has encouraged broadcasters to present conflicting views through partisan voices as well as through predigested commentary. *See Democratic National Committee, supra* Note 1, 25 F.C.C.2d at 222-223. However, as we make clear in text, the selective, edited presentation by the Government's licensee of partisan voices on news shows, for example, does not erase the *special* advantages of allowing self-selected partisan voices on advertising time.

separate mode of expression, not simply a duplication of other expression on the same medium.[33]

The importance of initiative and control to the First Amendment interests in wide-open debate and individual self-expression should be obvious. Vigorous, free expression is promoted when members of the public have *some* opportunity to take the initiative and editorial control into their own hands on the broadcast media. It has traditionally been thought that the best judge of the importance of a particular viewpoint or issue is the individual or group holding the viewpoint and wishing to communicate it to others. In the First Amendment area, our best guarantee has always been a "free market" in which partisans who feel strongly on particular issues may decide on their own to speak out and to speak out in their own way. The present system, allowing a flat ban on editorial advertising, conforms instead to a paternalistic structure in which licensees and bureaucrats decide what issues are "important," how "fully" to cover them, and the format, time and style of the coverage.

Even if broadcasters were to succeed in presenting a full spectrum of viewpoints and partisan spokesmen on non-advertising time, their retention of *total* initiative and editorial control is inimical to the First Amendment. The importance of fair, objective and full treatment of controversial issues on normal programming cannot be doubted. But, as the Supreme Court has said in the context of classroom debate, "supervised and ordained discussion" is not enough. *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969). "The Nation's future depends upon leaders trained through wide ex-

[33] *See* text at pages [Apps. 471-72] & Note 37 *infra*. See also Note, *A Fair Break for Controversial Speakers: Limitations of the Fairness Doctrine and the Need for Individual Access*, 39 GEO. WASH. L. REV. 532, 557-560 (1971).

posure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'" *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967). In other words, there is always a strong First Amendment interest in opening up channels for more spontaneous, self-initiated, self-controlled expression.[34]

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[34] We are cognizant of current proposals to reform the Commission's fairness doctrine and invigorate its enforcement, so lackluster in the past. We commend the Commission's consideration of new rules to "encourage and implement" presentation of opposing viewpoints by reemphasizing the obligation to "seek out" controversial issues. *Obligations of Broadcast Licensee Under the Fairness Doctrine*, 35 FED. REG. 7820 (1970). But, as the Commission says, the proposed rules would be but a "modest * * * step in promoting access to the media." *Id.* at 7821. They go little beyond the present obligation to give "full" coverage to controversial issues. Such an obligation is inherently difficult to define and enforce. At best, the Commission can evaluate only the *general* willingness of a licensee to "seek out" issues and glaring examples of noncoverage of obviously important issues. The Commission cannot be expected to engage licensees in fine debates over coverage of less obviously life-or-death issues. But the fundamental point—the point we emphasize—is that no matter how "fully" controversial issues might be covered in a perfect broadcasting world, the basic initiative and control remains with the licensee. Because there is not even a partial "free market" opening to the public at large, the crucial First Amendment interests in decentralized iniative and control go unsatisfied.

We realize that there is another possible, but purely speculative, reformation of the fairness doctrine now under consideration which might be supposed to obviate the need for a measure of "free market" access to advertising time. It has been proposed that licensees be required to provide self-edited advertising time to groups or individuals under the fairness doctrine only when a commercial advertiser has already taken a controversial position in his broadcast messages. Such an approach has been taken regarding cigarette advertisements, though that case was said to be extraordinary and not to establish a general precedent. *Banzhaf* v. *F.C.C.*, 132 U.S.App.D.C. 14, 405 F.2d 1082 (1968). But even if that principle were made to apply generally, it would leave the initiative solely in the hands of commercial advertisers: the only issues on which noncommercial groups and individuals could speak through

Even in terms of the public's First Amendment interest emphasized by the Commission and intervenors—the interest of "viewers and listeners" in passive access to the full spectrum of viewpoints on radio and television—editorial advertising plays an important role. The concept of "full" coverage of "controversial" issues "of public importance" is vague to say the least, and leaves much to the broadcasters' discretion (and possible oversight).[35] Assuming that broadcasters are sometimes fallible, the goal of a fully informed public is best attained by opening of outlets for members of the public to supplement the licensees' assessments of "importance," "controversiality" and "full" coverage. The Commission's and intervenors' argument might be somewhat stronger if it were designed to support a partial ban on editorial advertising concerning issues and views which have *in fact* been substantially aired on normal programming time.[36] The argument is unconvincing, however, in support of a flat, *per se* ban on any and all editorial advertisements.

Moreover, even if "antiwar views," for example, have in fact been presented on news and interview shows, it

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editorial advertisements would be those issues which commercial advertisers had already chosen to raise themselves. Allowing such a narrow group, motivated largely by business profit, to set the agenda for editorial advertising is unconscionable and contrary to First Amendment precepts. It is crucial that noncommercial groups and individuals have the same rights of initiative as commercial advertisers.

[35] The guarantees of full and fair coverage have proved particularly difficult to define and enforce in the past. They have taken on effective meaning only in the most extreme cases of broadcaster irresponsibility. For a depressing critique of the Commission's apparent inability to enforce its own standards, *see* Cox & Johnson, *Broadcasting in America and the FCC's License Renewal Process: An Oklahoma Case Study*, 14 F.C.C.2d 1 (1968).

[36] Even then, however, the special attributes of editorial advertising would not be eliminated by the broadcaster's own coverage. *See* text at pages [Apps. 467-70] *supra* & pages [Apps. 471-72] *infra*.

is not *necessarily* clear that a particular antiwar editorial advertisement would add nothing to the public's information and understanding. "Viewpoints" cannot be so neatly and infallibly catalogued as the Commission would have us believe. Self-expression and public debate are much more subtle phenomena; matters of style and intensity of feeling are important components.[37] Again, an across-the-board ban on editorial advertisements—leaving the quality of public debate in the control of one licensee, supplemented by no other autonomous inputs—may well ignore opportunities to enliven and enrich the public's overall information.

We recognize, of course, that the onesidedness and private editing of particular "spot" editorial advertisements may in the end steer viewers and listeners away from the "truth" by distorting complex issues. Being brief, these "spot" messages—no less than normal broadcast news coverage—may not canvass all possible arguments or develop all possible implications of the position they espouse. But that does not mean that they are unprotected by the First Amendment. Our Constitution protects many forms of misleading and overly simplified

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[37] In *Lee* v. *Board of Regents of State Colleges, W.D. Wis.*, 306 F.Supp. 1097 (1969), *affirmed*, 7 Cir., 441 F.2d 1257 (1971), the court held that a school newspaper was obliged under the First Amendment to print antiwar editorial advertising, even though antiwar views could be printed in the newspaper's news and letters-to-the-editor columns. The court stressed the qualitative—and valuable—difference in expression of views through an editorial advertisement. "It is readily apparent," it said, "that a paid advertisement can be cast in such a form as to command much greater attention than a letter to the editor. Large type, photographs, repeated publication and full pages of space are some of the modes of expression available in an editorial advertisement that might not be available in a letter to the editor." *Id.* at 1101. Another court has come to the same result in a newspaper editorial advertising case. *Zucker* v. *Panitz*, S.D. N.Y., 299 F.Supp 102 (1969). *See* text at pages [Apps. 474-75] *infra.*

political expression in order to ensure robust, wide-open debate. "[N]either factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct * * *." *New York Times Co.* v. *Sullivan, supra,* 376 U.S. at 273. Nor does the brevity of the criticism. We must, then, be very, very slow to judge any sort of speech on public issues worthless. The marketplace of ideas protected by the First Amendment, after all, is not governed by the tastes and intellectual standards of the universities or the broadcast newsroom —or even of judicial chambers.

We conclude, therefore, that the fairness doctrine's goal of full and fair coverage of issues on normal programming time does not eliminate the public's interest in a further, complementary airing of controversial views during advertising time. We must concur in the Supreme Court's only recorded comments on constitutional protection for editorial advertising—comments made in the context of newspapers, like broadcasting a medium which may be expected, if not required, to present the various sides of public issues in its non-advertising space. The Court said that editorial advertisements, unlike commercial advertisements,[38] are of fundamental First Amendment concern, since they deal with political questions. And it protected them from libel law attack to the same extent as the newspapers' own editorial columns, for

> "[a]ny other conclusion * * * might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have

[38] Commercial advertising—indeed, any sort of commercial speech —is less fully protected than other speech, because it generally does not communicate ideas and thus is not directly related to the central purpose of the First Amendment. *See Breard* v. *City of Alexandria,* 341 U.S. 622 (1951); *Valentine* v. *Chrestensen,* 316 U.S. 52 (1942).

> access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. * * * The effect would be to shackle the First Amendment in its attempt to secure 'the widest possible dissemination of information from diverse and antagonistic sources.' * * *"

New York Times Co. v. *Sullivan, supra,* 376 U.S. at 266.

V

We come now to the aspect of the broadcasters' policy which, petitioners say, trenches on the First Amendment interest in editorial advertising. The constitutional defect of that policy is somewhat ironic. The *New York Times* Court made clear that the fact distinguishing fully protected editorial advertising from less fully protected commercial advertising is that the former deals with controversial public issues. Indeed, the political nature of editorial advertising places it near the core of the First Amendment. However, the very characteristic which affords it strict constitutional protection is also the characteristic causing the broadcasters' challenged policy to single it out and exclude it from the airwaves. That, we believe, is the crucial aspect of these cases.

It is important to note that petitioners do not attack the exclusion of editorial advertising by broadcasters who accept no advertisements whatever.[39] We do not have to

[39] DNC's position is somewhat ambiguous. The ruling which it requested from the Commission would, by its terms, apply to all broadcasters, whether or not they accept any advertising. *See* text at page [App. 451] *supra.* However, on appeal DNC's arguments have been focused entirely on broadcasters who do already accept noncontroversial advertising. The interests of particular licensees in keeping all advertising off the air were not explored before the Commission or before this court—for example, an all music station may have a very substantial interest in broadcasting no paid announcements. Because the special issues relating to such licensees were not presented here, we do not decide them.

decide whether the broadcast medium inherently amounts to a "public forum" on the order of public streets or parks or meeting halls or even bus terminals.[40] We leave open the possibility that broadcasters may constitutionally relinquish no time at all for advertising of any sort. For the issue in these cases is the permissibility of discrimination, within a given block of advertising time, against "controversial" speech and in favor of commercial and "noncontroversial" speech. We deal here with a forum that already has been opened up by the licensees themselves, opened up for direct broadcast presentations by members of the public.

Fortunately, we do not write on a clean slate in this area. Six courts have confronted discriminations among types of speech like the one challenged here. Every one of them—four federal courts and two state supreme courts—has held that once a forum, subject to First Amendment constraints, has been opened up for commercial and "noncontroversial" advertising, a ban on "controversial" editorial advertising is unconstitutional unless clearly justified by a "clear and present danger." *Lee* v. *Board of Regents of State Colleges*, W.D. Wis., 306 F. Supp. 1097 (1969), *affirmed*, 7 Cir., 441 F.2d 1257 (1971); *Zucker* v. *Panitz*, S.D. N.Y., 299 F.Supp. 102 (1969); *Kissinger* v. *New York City Transit Authority*, S.D. N.Y., 274 F.Supp. 438 (1967); *Hillside Community Church, Inc.* v. *City of Tacoma, Wash.*, 455 P.2d 350 (1969); *Wirta* v. *Alameda-Contra Costa Transit District*, 64 Cal.Rptr 430, 434 P.2d 982 (1967). We join this unbroken line of authority.

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[40] *See, e.g., Schneider* v. *State*, 308 U.S. 147 (1939); *Hague* v. *C.I.O.*, 307 U.S. 496 (1939); *Wolin* v. *Port of New York Authority*, *supra* Note 24. *See generally* Kalven, *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 SUP. CT. REV. 1.

First Amendment doctrine governing access to forums for communication has been elaborated often in recent years. The essential test is an exercise in balancing, though weighted in favor of First Amendment values.[41] On one hand, the court must assess the constitutionally protected interest in the particular expressive activity in the particular forum. On the other hand, it must assess the importance of other uses of the forum which may be threatened and the extent to which they actually will be disrupted. Access may be denied only if the disruption caused by a particular type of expression (*e.g.*, public speaking, marching, picketing) clearly overrides the "preferred" interest in free speech. Thus there is some right of access by demonstrators to state capitol grounds [42] but not to a jailyard.[43]

Ordinarily, courts have to make the basic balancing judgment on their own. However, when the administrator of a forum has determined to grant access to some speakers or some picketers, he has implicitly made that basic judgment himself. When some public speaking is allowed in a park, the park's administrator has determined that the normal and proper functions of the park will not be excessively harmed by public speaking. If he then attempts to deny access to other public speakers

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[41] Most of the cases, other than those cited above in text, have involved access to particular places in order to perform expressive activities such as speaking, leafleting, or demonstrating in some fashion. For general discussions of the cases and the principles applied, *see* H. KALVEN, THE NEGRO AND THE FIRST AMENDMENT (paper ed. 1965); Note, *Regulation of Demonstrations*, 80 HARV. L. REV. 1773 (1967). There is no reason why the general principles applied in cases involving access to *places* should not apply to our cases involving access to a particular *medium* of expression. *See* Note 24 *supra*.

[42] *Cox* v. *Louisiana*, 379 U.S. 536 (1965).

[43] *Adderley* v. *Florida*, 385 U.S. 39 (1966).

he cannot be heard to claim the opposite. The burden is on him to show some very substantial factor distinguishing the disruption that would cause from that caused by the speaking or picketing already allowed.

The same principle applies to broadcasters who have opened their forum to commercial speech but would close it to controversial political speech. By opening up a forum for some paid presentations, independently edited and controlled by members of the public, the broadcasters have waived any argument that advertising is inherently disruptive of the proper function of their stations. The exclusion of only one sort of advertising—which we have shown to have great First Amendment value—is then highly suspect, a *prima facie* constitutional violation. To justify the exclusion, there must be a substantial factor distinguishing the disruptive effect of editorial advertising from that of commercial advertising.

The content of the idea which the excluded speakers seek to promote is—emphatically—*not* permitted as a distinguishing factor in itself. Indeed, the existence of an exclusionary discrimination apparently based on the content of ideas presents an additional, or greatly heightened, *prima facie* constitutional violation. Both free speech and equal protection principles condemn any discrimination among speakers which is based on what they intend to say.[44] If the First Amendment prohibits anything at all, it must be a censorial discrimination among ideas. And since First Amendment rights have been held to be "fundamental rights" triggering the strict standard

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[44] For discussions of the First Amendment-equal protection intersection, *see* Blasi, *Prior Restraints on Demonstrations*, 68 MICH. L. REV. 1482, 1492-1497 (1970); Kalven, *supra* Note 40, 1965 SUP. CT. REV. at 29-30; Van Alstyne, *Political Speakers at Universities: Some Constitutional Considerations*, 111 U. PA. L. REV. 328, 337-339 (1963).

of review under equal protection principles, *Williams* v. *Rhodes*, 393 U.S. 23, 30-31 (1968), it is doubly clear that the burden of justifying any apparent discrimination is very great indeed.

At least 20 years ago, the Supreme Court began condemning discriminations among different exercises of the same type of expression. *Fowler* v. *Rhode Island*, 354 U.S. 67 (1953); *Niemotko* v. *Maryland*, 340 U.S. 268, 272-273 (1951). Both cases involved access to a forum already opened to others. More recently, the Court in *Cox* v. *Louisiana*, 379 U.S. 536 (1965), invalidated a state regulation that permitted labor picketing but not civil rights picketing. In his concurrence, Mr. Justice Black stated that this sort of discrimination is "censorship in a most odious form" and violates both the First Amendment and the equal protection clause. *Id.* at 581. Similarly, in *Adderley* v. *Florida*, 385 U.S. 39 (1966), the Court upheld a ban on demonstrations in a jailyard, but was careful to note that "[t]here is not a shred of evidence in this record * * * [the demonstrators were excluded] because the sheriff objected to what was being sung or said by the demonstrators or because he disagreed with the objectives of their protest." *Id.* at 47.

No doubt a discrimination against all controversial speech—such as we face in these cases—is somewhat less "odious" than a discrimination among different controversial viewpoints on particular issues. But it is a form of censorship just the same.[45] It is a favoritism toward

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[45] In *Wirta* v. *Alameda-Contra Costa Transit District*, 64 Cal. Rptr 430, 434 P.2d 982, 986 (1967), the California Supreme Court came to the same conclusion as we do on this issue, saying:

> "* * * The vice is not that the district has preferred one point of view over another, but that it chooses between classes of ideas entitled to constitutional protection, sanctioning the expression of only those selected, and banning others. Thus

the *status quo* and public apathy and, in these cases, a favoritism toward bland commercialism.[46] Such favoritism flies in the face of the First Amendment, whose central purpose is to protect and promote controversy, "uninhibited, robust and wide-open," on public issues.

Moreover, it is by no means clear that a broadcasters' ban on "controversial" advertising does not impermissibly open the door to a *sub rosa* discrimination *among* controversial ideas. The term "controversial" is extraordinarily vague. Some advertisements may not be deemed "controversial"—and may not even be "controversial" for purposes of the fairness doctrine[47]—but may still express ideas, the negative of which would surely be labeled "controversial."[48] Ads for Radio Free Europe or Army re-

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the district's regulation exercises a most pervasive form of censorship.

"* * * [T]he district's policy * * * affords total freedom of the forum to merchantile messages while banning the vast majority of opinions and beliefs extant which enjoy First Amendment protection because of their noncommercialism. No statistical data is required to demonstrate that in the totality of man's communicable knowledge, that which bears no relationship to material value preponderates."

The Supreme Court of Washington specifically adopted this view in *Hillside Community Church, Inc.* v. *City of Tacoma*, Wash., 455 P.2d 350, 353 (1969).

[46] Commissioner Johnson commented in his dissent that broadcasters "have created a system in which immediate access is granted to one, privileged class of applicants: the commercial peddler of goods and services. * * * We have an individual right of access, all right, but only for hucksters of industrial garbage." *Democratic National Committee, supra* Note 1, 25 F.C.C.2d at 233.

[47] *See Banzhaf* v. *F.C.C.*, 132 U.S.App.D.C. 14, 405 F.2d 1082 (1968); *Green* v. *FCC.*, —— U.S.App.D.C. ——, —— F.2d —— (Nos. 2470 & 24516, decided June 18, 1971).

[48] In *Wirta* v. *Alameda-Contra Costa Transit District, supra* Note 45, 434 P.2d at 987, the California Supreme Court made the same point very forcefully, and provided several telling examples:

[Footnote continued on page 480]

cruiting, for example, may be allowed unanswered on the air, while ads calling the notion of the "free world" a sham or ads calling the Army a threat to democracy would be banned entirely. The line between ideological and nonideological presentations is an almost impossible one to draw. All too often in our society one particular ideology—that of passivity, acceptance of things as they are, and exhaltation of commercial values—is simply taken for granted, assumed to be a nonideology, and allowed to choke out all the rest.[49]

Thus the editorial advertising ban, particularly when licensees accept advertising generally, establishes an unmistakable infringing of First Amendment liberties. The Commission and the broadcasters, then, bear a very heavy burden of justification. Whether we require a "compelling" justification, an "overriding" justification, or a "clear and present danger" is relatively unimportant.

VI

It being established that there is a strong and specific First Amendment interest in editorial advertising and that the policies discriminatorily barring such expression work a *prima facie* violation of constitutional principles, we must consider the countervailing considerations raised by the Commission and the broadcaster-intervenors. In

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[48] [Continued]

> "* * * A lumber company may advertise its wood products, but a conservation group cannot implore citizens to write to the President or Governor about protecting our natural resources. An oil refinery may advertise its products, but a citizens' organization cannot demand enforcement of existing air pollution statutes. An insurance company may announce its available policies, but a senior citizens' club cannot plead for legislation to improve our social security program."

[49] *See generally* C. WAXMAN (ed.), THE END OF IDEOLOGY DEBATE (1969).

order to justify the policy at issue, they must show some very substantial harm that would be caused by acceptance of editorial advertising—a sort of harm great enough to override the First Amendment interests at stake and a sort of harm not already involved in the acceptance of commercial and "noncontroversial" advertising. Only such a showing could convince us that the ban on editorial advertisements is supported by sufficient countervailing values and is not based solely on the content of the ideas conveyed.

The Commission and intervenors have begun from the assumption that our holding for petitioners would deprive broadcast licensees of their highly prized editorial independence and control over their frequencies, giving editorial advertisers a *right* to air time which commercial advertisers do not presently have. They have argued that petitioners seek the right to "grab the mike" from broadcasters' hands.[50] The result, they say, would be a threefold disaster. First, they foresee " 'a return to the chaotic situation of radio's early days' " [51] when too many hands grabbing for too few mikes made successful broadcasting impossible. Second, they argue that compulsory acceptance of editorial advertising would allow a few rich individuals or groups to buy up great blocks of time to purvey views on only one side of important issues, thus grossly unbalancing the broadcast station's treatment of those issues. And third, they point out that broadcasters compelled to accept editorial advertisements on one side of an issue would then be required by the fairness doctrine to accept at least some advertisements on the other side —free of charge if necessary. Provision of such free ad-

[50] Statement of attorney for intervenor Columbia Broadcasting System at oral argument before this court.

[51] Brief for the Commission in Case No. 24,537 at p. 12.

vertising time, they say, would cut into the broadcasters' revenues and might bring financial collapse.

The arguments of the Commission and intervenors fall well short of the mark. The reason is that they have apparently misunderstood the narrowness of the issue here. All that we are considering is the permissibility of a total, flat ban on editorial advertising. All petitioners ask is that broadcasters be required to accept *some* editorial advertising. They do not advocate an absolute right to air their advertisements. As the *Red Lion Court* made clear, there could not be any such absolute right because advertising time, like all broadcast time, is severely limited. *See* text at page [App. 467] *supra*. Under the Communications Act, broadcasters are not "common carriers" obliged to accept any advertising message that is submitted.[52] And petitioners do not argue that they should be. What petitioners do argue is that editorial advertisements should at least be considered and that some should be aired.

Such a modest reform would not substantially undermine broadcasters' editorial control over their frequencies. For broadcasters would retain full latitude to control the content of their programming. Their editorial control over non-advertising time would not be disturbed

[52] 47 U.S.C. § 153(h) (1964). The Commission and intervenors argue that this "common carrier" provision would be declared unconstitutional if we were to decide for petitioners in these cases. That, of course, is absolutely incorrect. The Commission and intervenors also point to a part of the Communications Act providing that if a station permits one candidate for office to use its facilities, it must then permit others equal time, but providing also that "[n]o obligation is imposed upon any licensee to allow the use of its station by any such candidate." 47 U.S.C. § 315(a) (1964). This statutory provision squares perfectly with our holding that a broadcaster is not necessarily obliged to provide any time for advertisements, but that if he does sell some advertising time he may not totally exclude editorial advertising.

whatever. All that would be affected is their allocation of advertising time—an area in which *editorial* control over content has never been of major importance. The interest in deciding which advertisements to accept is not as great as in deciding what public issues to cover and how to cover them on news presentations, for example. *See* text at page[s] [Apps. 464-65], *supra*. It surely cannot be equated, as the Commission and intervenors suggest, with the interest of law review editors in deciding what articles to publish. *See Avins* v. *Rutgers, State University of New Jersey*, 3 Cir., 385 F.2d 151 (1967), *cert. denied*, 390 U.S. 920 (1968). A broadcaster traditionally is not nearly as involved in the preparation and editing of advertisements as a law review staff is in the preparation and editing of articles.

Within the affected block of advertising time, neither chaos nor anything approaching chaos would follow the modest reform at issue. For, again, broadcasters would retain wide-ranging control. It is well established in First Amendment law governing access to forums that "reasonable regulations" may be promulgated and enforced to limit the exercise of free speech.[53] At the least, there may be regulations determining the time, place and manner of speech. They may not be used to stifle speech, but they are absolutely necessary to see that too many groups speaking at once do not drown out one another or trench overly much on the normal uses to which the forum is put by the public in general. The same principle applies to broadcasters' methods for allocating advertising time. All that petitioners condemn here are regulations providing that public issue advertising may be aired "at no time, in no place and in no manner" over the broadcast media.

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[53] *See, e.g., Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308, 320 (1968); Note, *supra* Note 15.

Clearly, for example, broadcasters are entitled to place an outside limit on the total amount of editorial advertising they will sell. To fail to impose some such limit would be to deny the public the other sorts of programming which it legitimately expects on radio and television. Similarly, "reasonable regulation" of the placement of advertisements is altogether proper. No advertiser has a right to air his presentation at any particular point in an evening's programming. Nor does he have a right to clog a particular time segment with his messages. A relegation of all editorial advertising to non-"prime time" or any other major discrimination in the placement of editorial advertisements would no doubt go too far. But there is still room for broad exercise of the broadcasters' discretion.

We need not define the precise control which broadcasters may exercise over editorial advertising. Rather, the point is that by requiring that *some* such advertising be accepted, we leave the Commission and licensees broad latitude to develop "reasonable regulations" which will avoid any possibility of chaos and confusion. The spectre of chaos and "mike grabbing" raised by the Commission and intervenors here is, as petitioners say, a "bogus issue." Broadcasters, after all, have dealt quite successfully with the scheduling problems involved with commercial advertising. We require only that noncommercial advertisers be treated in the same evenhanded way. Although many broadcasters already do allow editorial advertisements on the air, we have not been shown one reason, drawn from their experience, to suggest that chaos has resulted.

Beyond the mistaken suggestion of administrative apocalypse, the Commission and intervenors have raised a more plausible and important claim, involving the danger that a few individuals or groups might come to domi-

nate editorial advertising time. Of course, the mere fact that wealthy people may use their opportunities to speak more effectively than other people is not enough to justify eliminating those opportunities entirely. It takes more money to operate a magazine or newspaper—or, for that matter, a broadcast station—than to buy a segment of time for an editorial advertisement. Yet we are not reluctant to provide strict First Amendment protection for the operators of magazines, newspapers and broadcast stations. The real problem, then, is not that editorial advertising will cost money, but that it may be dominated by only one group from one part of the political spectrum. A onesided flood of editorial advertisements could hardly be called the "robust, wide-open" debate which the people have a right to expect on radio and television.

Again, however, invalidation of a flat ban on edtiorial advertising does not close the door to "reasonable regulations" designed to prevent domination by a few groups or a few viewpoints. Within a general regime of accepting *some* editorial advertisements, there is room for the Commission and licensees to develop such guidelines.[54] For example, there could be some outside limits on the amount of advertising time that would be sold to one group or to representatives of one particular narrow viewpoint. The licensee should not begin to exercise the same "authoritative selection" in editorial advertising which he exercises in normal programming. *See* text at pages [Apps. 469-70] *supra*. However, we are confident of the Commission's ability to set down guidelines which avoid that danger.

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[54] In the context of regulating demonstrations or picketing, guidelines which limit access because the same or similar groups had already had substantial access would be unusual and perhaps impermissible. However, the interest in maintaining some degree of balance on the broadcast media is particularly great. And "the characteristics of news media justify differences in the First Amendment standards applied to them." *Red Lion Broadcasting Co. v. F.C.C.*, *supra* Note 7, 395 U.S. at 386.

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We are no less confident of its ability to deal reasonably with the final problem it has raised—that relating to licensees' fairness obligations. Invalidation of a flat ban on editorial advertising, of course, leaves the Commission the power to require that if editorial advertisements are accepted on one side of an issue, then broadcasters must also accept at least some advertisements on the other side of the issue, free of charge if necessary. *See Cullman Broadcasting Co.*, 40 F.C.C. 576 (1963). The result of such a reasonable regulation, however, need not be financial disaster. Indeed, it is incredible that the Commission would enforce a rule so rigid that licensees would be driven out of business.[55] If the obligation to provide some free time for answering editorial advertisements were shown to threaten actual financial harm to particular broadcasters, the Commission could make necessary adjustments.[56]

We conclude that none of the spectres raised by the Commission and intervenors—spectres of chaos, grossly unbalanced programming and financial disaster—is enough to justify a flat ban on editorial advertising. What real problems there are may be dealt with while the acceptance of *some* editorial advertisements is required. The keynote must be a scheme of reasonable regulation, administered by the licensee and guided by the Commission.

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[55] We note that the Commission's requirement of free time for antismoking was administered generously toward the financial concerns of licensees and, indeed, few broadcasters seem to have been deterred from accepting cigarette commercials as a result. *See National Broadcasting Co., Inc.*, 16 F.C.C.2d 947 (1969).

[56] *See* Note, *Fairness Doctrine: Television as a Marketplace of Ideas*, 45 N.Y.U. L. REV. 1222, 1249 (1970). We must be somewhat skeptical of the talk about financial disaster. For, according to Commissioner Johnson, television broadcasters at least "*average* a 90 to 100 percent return on tangible investment annually." N. JOHNSON, HOW TO TALK BACK TO YOUR TELEVISION SET 65 (1969). (Emphasis in original.)

At least in the past, the Commision has not considered this task so impossible. Twenty-five years ago it decided a case in which a union charged that a broadcaster was violating free speech rights by refusing to sell program time for the airing of controversial views. The Commission stated:

> "* * * The spirit of the Communications Act of 1934 requires radio to be an instrument of free speech, subject only to general statutory provisions imposing upon the licensee the responsibility of operating its station in the public interest. * * *
>
> "* * * No single or exact rule of thumb for providing time, on a non-discriminatory basis, can be stated for application to all situations which may raise in the operation of all stations. The Commission, however, is of the opinion that the operation of any station under the extreme principles that no time shall be sold for the discussion of controversial public issues and that only charitable organizations and certain commercial interests may solicit memberships is inconsistent with the concept of public interest * * *. The Commission recognizes that good program balance may not permit the sale or donation of time to all who may seek it for such purposes and that difficult problems calling for careful judgment on the part of station management may be involved in deciding among applicants for time when all cannot be accommodated. However, competent management should be able to meet such problems in the public interest and with fairness to all concerned. The fact that it placed an arduous task on management should not be made a reason for evading the issue by a strict rule against the sale of time for any programs of the type mentioned."

United Broadcasting Co., 10 F.C.C. 515, 517-518 (1945). We agree with those views, and see no reason why the Commission and broadcast licensees should be any less

competent in 1971 than they were in 1945. Given a scheme of reasonable regulation, there is no reason why acceptance of editorial advertising should cause any substantial harm or disruption not already involved in the acceptance of other advertising. Therefore, to single out and exclude editorial advertising is to violate the First Amendment of the Constitution.

VII

On the basis of the foregoing, we reverse the Commission's decision that a flat ban on all editorial advertising is permissible. However, we remand these cases to the Commission for further consideration. On remand, the Commission should develop reasonable regulatory guidelines to deal with editorial advertisements. Petitioners should be allowed to reapply for advertising time; and, unless their presentations are found to be excludable under the Commission's guidelines, their applications should be accepted. Since the issues on which BEM and DNC seek to speak are current and changing, it is essential that regulations be developed speedily and that the affected broadcasters pass promptly upon petitioners' applications to buy time.

In the end, it may unsettle some of us to see an anti-war message or a political party message in the accustomed place of a soap or beer commercial. But we must not equate what is habitual with what is right—or what is constitutional. A society already so saturated with commercialism can well afford another outlet for speech on public issues. All that we may lose is some of our apathy. That is a small price to pay. For, as the Supreme Court has said, "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions

as they are, or even stirs people to anger." *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

Reversed and remanded.

McGOWAN, *Circuit Judge, dissenting*: The majority do not hold that petitioner in No. 24,492 is entitled to have its proposed spot announcements carried by the intervenor-licensee there involved, or that the petitioner in No. 24,537 is assured of being able to buy time for its programs on public issues. What is held is that the Constitution commands that "some", but not all, editorial advertising be accepted; and the Commission is directed to embark upon rulemaking to determine how a licensee is to differentiate the "*some*" from the all.

The majority appear to believe that this assignment will not prove difficult. I am not so sure, particularly when I note that the only Commissioner who has perceived the same constitutional requirement as the majority responds to the practical problems by suggesting that sales of a significant proportion of the total broadcast time be made on a first-come, first-served basis, accompanied by a possible suspension of the fairness doctrine. That approach does not seem to me a promising one in terms of the public's right to know.

The difficulties derive, of course, from the physical peculiarity which distinguishes radio and television communication from all other forms, namely, the limited number of frequencies and the impossibility of accommodating all who may wish to be heard over them. This, so the Supreme Court has said in *Red Lion*, makes it "idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of each individual to speak, write or publish." The majority, in recognition of this fact, do

not purport to discern other than an "abridgeable" or "limited" First Amendment right to initiate paid editorial advertising. Petitioners themselves, it is said, may conceivably never be able to insist that their particular advertising be accepted. That will depend upon the rules which the Commission propounds.

The Commission has, at the least, been set a task of heroic proportions, and one whose very complexities may undermine the premise upon which it is founded. The question is whether the Constitution requires that it be undertaken. I am not convinced that it does. It is presently the obligation of a licensee to advance the public's right to know by devoting a substantial amount of time to the presentation of controversial views on issues of public importance, striking a balance which is always subject to redress by reference to the fairness doctrine. Failure to do so puts continuation of the license at risk—a sanction of tremendous potency, and one which the Commission is under increasing pressure to employ.

This is the system which Congress has, wisely or not, provided as the alternative to public ownership and operation of radio and television communications facilities. This approach has never been thought to be other than within the permissible limits of constitutional choice. Its existence provides a mechanism for implementation of the public's right to know which, by and large, has been effective. Indeed, the loudest voices in criticism of it complain that it has been working too well for the comfort of governmental policy makers in the areas of greatest current concern.

It is hardly the path of wisdom to scrap it for a system in which money alone determines what issues are to be aired, and in what format, even assuming, as is likely to be the case, that those issues, whatever they may prove to be, compare favorably with the intellectual content of

the great bulk of commercial advertising. The responsibility for informing the public is now squarely on the licensee. That responsibility will only be diluted and obscured by requiring the licensee, against his own better judgment, to accept paid editorial advertising. I do not think the First Amendment requires that result, at least not within the context of a regulatory scheme which has made provision for the airing of controversial issues of public importance.

Of course it is true that licensees are currently free to accept paid editorial advertising, and some do, subject always to the limitations of the fairness doctrine. It may well be that a detailed inquiry and investigation by the Commission of this area, by formal rulemaking or otherwise, would be both useful and consonant with the Commission's continuing obligation to see to it that the public interest obligations of the licensees are being met in the most effective way. The Commission's currently announced purpose to undertake a comprehensive and wide-ranging review of the operation of the fairness doctrine might well include the subject of paid editorial advertising. But, believing as I do that the First Amendment exerts no compulsion to the contrary, I would not order the Commission to undertake that review in a constitutional strait jacket which dictates the result in advance.

Order Entering Judgment

492

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1970

No. 24,492

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

POST-NEWSWEEK STATIONS, CAPITAL AREA, INC.,
Intervenor.

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING CO., INC.,
Intervenor,

COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenor.

Petitions for Review of Orders of the Federal Communications Commission

Before: Wright, McGowan and Robinson, Circuit Judges.

JUDGMENT

These cases came on to be heard on the records from the Federal Communications Commission, and were argued by counsel. On consideration thereof, it is

ORDERED AND ADJUDGED by this Court that the orders of the Federal Communications Commission on review herein are hereby reversed and the cases are remanded to the Federal Communications Commission for further proceedings in accordance with the opinion of the Court filed this date.

Per Curiam

For the Court:
Nathan J. Paulson
Clerk

Dated: August 3, 1971

Opinion by Circuit Judge Wright
Separate dissenting opinion by Circuit Judge McGowan

UNITED STATES COURT OF APPEALS
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AMERICAN BROADCASTING CO., INC.,
Intervenor,
COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenor.

Before: Wright, McGowan and Robinson, Circuit Judges.

ORDER

On consideration of the petitions for rehearing filed by Post-Newsweek Stations, Capital Area, Inc., American Broadcasting Companies, Inc., the United States of America and Federal Communications Commission, and Columbia Broadcasting System, Inc. for rehearing, and of the brief of *amicus curiae* National Broadcasting Company, Inc. in support of the petitions for rehearing, it is

ORDERED by the Court that the aforesaid petitions for rehearing are denied.

Per Curiam

October 4, 1971

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1970

No. 24,492

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE,
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POST-NEWSWEEK STATIONS, CAPITAL AREA, INC.,
Intervenor.

No. 24,537

DEMOCRATIC NATIONAL COMMITTEE,
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FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING CO., INC.,
COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenors.

Before: Wright, McGowan and Robinson, Circuit Judges.

ORDER

On consideration of respondents' further motion for stay of mandate to and including November 22, 1971, it is

ORDERED by the Court that respondents' aforesaid motion is denied.

Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA COURT

SEPTEMBER TERM, 1971

No. 24,492

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE,
Petitioner,

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FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
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No. 24,537

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and UNITED STATES OF AMERICA,
Respondents,

AMERICAN BROADCASTING CO., INC.,
Intervenor,
COLUMBIA BROADCASTING SYSTEM, INC.,
Intervenor.

Before: Wright, McGowan and Robinson, Circuit Judges.

ORDER

On consideration of the answer of Post-Newsweek Stations, Capital Area, Inc. intervenor in No. 24,492 in support of the motion of the Federal Communications Commission for a 30 day stay of mandate until November 22, 1971, it is

ORDERED by the Court that this Court adheres to its prior ruling denying the motion of the Federal Communications Commission to further stay the mandate until November 22, 1971.

Per Curiam